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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, ~~1929~~ 1930

No. ~~305~~ 10

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

vs.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

FILED SEPTEMBER 12, 1929

(34526)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 395

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vs.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

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4 In United States District Court for the Northern District of Illinois, Eastern Division

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, plaintiff,

vs.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Petition

Filed Oct. 13, 1928

To the honorable the JUDGES OF SAID DISTRICT COURT:

Your petitioner, Chicago, Milwaukee, St. Paul and Pacific Railroad Company, brings this action against the United States of America and the Interstate Commerce Commission (hereinafter called the commission) for the purpose of enjoining, setting aside, annulling, and suspending, in part, a certain certificate and order of the commission, entered January 4, 1928, and supplemental order, entered March 13, 1928, in proceedings entitled:

"Chicago, Milwaukee & St. Paul Reorganization," being No. 6240 on the finance docket of the commission.

For its cause of action the petitioner states:

(1) The petitioner is, and at all times hereinafter mentioned was, a railroad corporation duly organized and existing under the laws of the State of Wisconsin, having its principal operating office in the city of Chicago, in the State of Illinois, and in the Eastern Division of the Northern District thereof. It is engaged in the transportation of freight, for hire, in interstate and foreign commerce, subject to the interstate commerce act.

5

(2) The United States of America is made defendant in this suit pursuant to the district court jurisdiction act, being part of the urgent deficiencies act (38 Stat. at L. 219), approved October 22, 1913.

(3) The commission is an administrative tribunal created by the act to regulate commerce (24 Stat. at L. 379), approved February 4, 1887, as amended (the interstate commerce act), and is specifically charged with the administration and enforcement of said act.

(4) On or about March 18, 1925, Binkley Coal Company, an Illinois corporation, filed in this court its bill of complaint alleging the insolvency of Chicago, Milwaukee and St. Paul Railway Company, a Wisconsin corporation (hereinafter called the railway company), and praying the appointment of receivers of the properties of the railway company. Upon said complaint receivers of said properties were appointed by this court and thereafter said receiver-

ship was extended to all the properties of the railway company within the jurisdiction of the Seventh Circuit. Thereafter, upon similar complaint of Binkley Coal Company, receivers of the property of the railway company were appointed in the District Court for the District of Minnesota and said receivership was extended to all the properties of the railway company within the Eighth Circuit. Thereafter, upon similar complaint of Binkley Coal Company, receivers of the property of the railway company were appointed in the District Court for the Western District of Michigan and said receivership was extended to all the properties of the railway
6 company within the sixth circuit. Thereafter, upon similar complaint of Binkley Coal Company, receivers of the property of the railway company were appointed in the District Court for the District of Montana and said receivership was extended to all the properties of the railway company within the jurisdiction of the ninth circuit. Receivers of the property of the railway company within the jurisdiction of the District Court for the Southern District of New York were appointed by the district court for that district.

(5) The petitioner is informed and believes and therefore alleges as in this paragraph (5) set forth: During the month of March, 1925, for the purpose of protecting their respective interests in said receivership proceedings and in any ultimate dispositon of the property of the railway company, certain holders of the preferred stock of the railway company formed a preferred stockholders committee, composed of Mortimer N. Buckner, chairman, Arthur W. Loasby, Oliver C. Fuller, John McHugh, and Harold I. Pratt; certain holders of the common stock of the railway company formed a common stockholders committee, composed of Donald G. Geddes, chairman, George W. Davison, Bayard Dominick, Stanley Field, Walter L. Johnson, and Percy A. Rockefeller; and certain holders of the four per cent gold bonds of 1925, four per cent fifteen-year European loan of 1910 bonds, 4½% convertible gold bonds, twenty-five year four per cent gold bonds of 1909, and general and refunding mortgage gold bonds, Series A and Series B, of the railway company and first mortgage four per cent gold bonds of Chicago, Milwaukee and Puget Sound Railway Company formed a bondholders committee, composed of Frederick H. Ecker, chairman, Bertram Cutler, Samuel H. Fisher, Jerome J. Hanauer, William E. Knox, Charles E. Mitchell, Charles A. Peabody, and H. F. Whitcomb. Said preferred stockholders committee, common stockholders committee, and bondholders' committee are hereinafter collectively called the committees. There
7 was also created in France a committee to represent the holders of bonds residing in that country. Each of the committees incurred expenses in the printing of the agreements under which the respective committees were constituted, in the publication of advertisements in the newspapers, and the printing and mailing of circulars advising holders of the class of securities which it represented of the organization of the committee and of various matters affecting

the interests of such security holders. Each of the committees also retained counsel to represent it and the security holders which it represented in the litigation then pending or which might ensue affecting the properties of the railway company, in negotiations looking toward the reorganization of those properties and otherwise in the protection of their interests as holders of the securities represented by such committee. The committees requested the private banking firm of Kuhn, Loeb & Co., of New York, a copartnership, and the National City Company, a New York corporation (hereinafter together called the reorganization managers), to prepare and submit to them for their consideration a plan for the reorganization of the railway company in the interest of such security holders as might join therein.

(6) Subsequent to the appointment of the receivers of the property of the railway company as aforesaid and the appointment of the committees, proceedings were commenced in all the courts in which such receivers had been appointed for the foreclosure of the general and refunding mortgage, indenture of the railway company dated July 1, 1909, to the Farmers' Loan and Trust Company, trustee, indenture of the railway company dated June 1, 1910, to United States Mortgage and Trust Company and William Nelson Cromwell, trustee, indenture of the railway company, dated December 1, 1915, to United States Mortgage and Trust Company, trustee, and indenture of the railway company dated June 1, 1912, to
8 Bankers Trust Company, successor trustee, of the railway company and of the first mortgage of Chicago, Milwaukee and Puget Sound Railway Company under all of which there were outstanding obligations of the railway company secured by mortgages upon its properties. The same receivers who had previously been appointed were appointed receivers of the mortgaged properties in the foreclosure proceedings.

(7) After an intensive study of the financial requirements of the railway company, its outstanding indebtedness, its probable future earnings, the relative treatment to be accorded to the bonds secured by its underlying mortgages and junior mortgages, respectively, the ultimate disposition of its indebtedness to the United States aggregating $55,000,000, the desirability of permitting the stockholders of the railway company to participate in its reorganization and of the means by which such participation could be effectively accomplished in fairness both to said stockholders and to other security holders, and the many other perplexing questions pertaining to the credit, affairs, and probable future of the properties of the railway company, the reorganization managers advised that the railway company be reorganized substantially in the manner provided in the reorganization plan subsequently adopted. Upon a consideration of the plan proposed by the reorganization managers and as a result of negotiations between the committees, and with the continuous advice and counsel of the reorganization managers, there was adopted by the committees on or about June 1, 1925, a plan and agreement dated

June 1, 1925, for the reorganization of the railway company (a copy of which is filed herewith, marked Exhibit A, and made a part hereof). Said plan and agreement as modified, as hereinafter stated, is hereinafter called the reorganization plan. The reorganization plan was an agreement solely between the reorganization managers,
parties of the first part, the bondholders committee, the pre-
9 ferred stockholders committee and the common stockholders committee, parties of the second part, and such holders of bonds, preferred stock, and common stock of the railway company who might become parties to the reorganization plan as therein provided. Holders of securities of the railway company who did not become parties to the reorganization plan were to have no rights under it or in respect of any of the properties purchased by the reorganization managers under the authority conferred by the reorganization plan. Holders of bonds who became parties to the reorganization plan are hereinafter called depositing bondholders. Holders of preferred stock and of common stock who became parties to the reorganization plan are hereinafter called depositing stockholders. As more particularly appears from the reorganization plan, the reorganization plan gave to the reorganization managers broad powers and discretion, and correspondingly broad duties, in the protection of the interest of depositing bondholders and depositing stockholders. As more particularly appears from the reorganization plan, it contemplated that the properties of the railway company would be purchased for the benefit of the depositing bondholders and the depositing stockholders at judicial sales held pursuant to the proceedings then pending, or which might thereafter ensue, that all such properties, or such part of them, as the reorganization managers might determine, would be vested in a new company, that such new company should be capitalized as provided in the reorganization plan, that the new company should issue to the reorganization managers, in consideration for such properties and certain specified cash as hereinafter stated, its securities as provided by the reorganization plan, and that upon such issue the reorganization managers would in turn distribute such securities to the depositing bondholders and the depositing stockholders in accordance with the reorganization plan.

(8) The reorganization managers retained counsel to rep-
10 resent them and the depositing bondholders and depositing stockholders in the litigation affecting the properties of the railway company, in connection with the issue of the securities contemplated by the reorganization plan and otherwise in the performance of the duties of the reorganization managers under the reorganization plan and in the protection of the interests of the depositing bondholders and depositing stockholders.

The reorganization managers employed as depositaries of securities under the plan, to receive and hold the bonds and stocks of depositary bondholders and depositary stockholders, numerous banks or

trust companies in Paris, France; London, England; New York City; Boston, Mass.; Philadelphia, Pa.; Pittsburgh, Pa.; Chicago, Illinois; St. Paul, Minn.; Minneapolis, Minn.; Milwaukee, Wis.; and Seattle, Wash.

The reorganization managers also retained a well-known firm of consulting engineers to advise them in connection with the reorganization plan, and expenditures upon the property during the course of the receivership, and otherwise to assist them in technical matters in the course of the litigation.

The reorganization managers also incurred large expenses for the printing and engraving of certificates of deposit to be issued by the depositaries against bonds and stock deposited under the plan and the listing of such certificates of deposit upon the New York Stock Exchange in order that depositing bondholders and depositing stockholders might be afforded a market for their securities.

(9) Holders of a substantial amount of bonds, preferred stock, and common stock of the railway company did not, upon the promulgation of the reorganization plan, become parties to the reorganization plan, but, on the contrary, conducted in this court extensive litigation for the purpose of having the reorganization plan declared invalid and defeating the efforts of the depositing bondholders and depositing stockholders to acquire the properties of the railway
11 company, and various appeals and applications for writs of certiorari were taken by said dissenting security holders to the Circuit Court of Appeals for the Seventh Circuit and the United States Supreme Court. There were three separate groups of such dissenting security holders: (1) A group of bondholders represented by a committee known as the Roosevelt Committee. (2) A group of stockholders represented by the committee known as the Iselin Committee, and (3) a group represented by a committee known as the Jameson Committee. Counsel for the committees and the reorganization managers participated in all said litigation on behalf of the security holders who were parties to the reorganization plan. The petitioner is informed and believes and, therefore, alleges that in the course of the controversy between the depositing bondholders and the depositing stockholders represented by the reorganization managers and the committees, on the one hand, and the dissenting security holders above mentioned, on the other hand, large amounts were expended and obligations incurred by the reorganization managers and the committees for newspaper advertising and printing and mailing circulars for the purpose of explaining the situation to holders of bonds, preferred stock, and common stock of the railway company who had not at the time joined any of the groups, and for counsel fees.

(10) By the reorganization plan it was provided that holders of the preferred stock of the railway company who became parties to the reorganization plan should pay to the reorganization managers $28 per share, and that holders of the common stock of the railway

company who became parties to the reorganization plan should pay to the reorganization managers $32 per share, as a condition to their right to participate in the benefits of the reorganization plan. It was specifically provided in the reorganization plan that out of said payments by the stockholders a sum equal to $1.50 per share of
12 the preferred and common stock of the railway company should be set aside to provide for the compensation of the reorganization managers, and the committees, fixed as in the reorganization plan provided, and the fees and disbursements of their counsel and all the depositaries and sub-depositaries, any balance of said sum to be paid over to the new company, to be organized as provided in the reorganization plan, as additional working capital, or, if the reorganization managers in their discretion should so determine, to be returned pro rata to the holders of certificates of deposit for stock. Said sum equal to $1.50 per share of the preferred and common stock of the railway company so to be set aside as provided in the reorganization plan is hereinafter called the trust fund. It was contemplated and provided in the reorganization plan that the cash thus paid to the reorganization managers, other than the trust fund, should be paid over to the new company to be organized pursuant to the reorganization plan, after deducting therefrom all the expenses of the receivership and of the foreclosure proceedings and certain other expenses of the reorganization, which were not provided for by the trust fund.

In order that such expenses might not be capitalized, it was provided that the reorganization managers should deliver against such payments by the stockholders, out of the new securities to be issued to the reorganization managers by the new company, $24.00 principal amount of bonds for each $28.00 per share paid by depositing preferred stockholders and $28.00 principal amount of bonds for each $32.00 per share paid by depositing common stockholders. The difference between the principal amount of bonds so to be delivered to the depositing stockholders and the amount of cash to be paid by them to the reorganization managers, other than the trust fund, materially exceeded all the expenses to be deducted from such cash and the net amount of cash thus contemplated to be paid to the new company exceeded the amount by which the new se-
13 curities to be issued by it exceeded the capitalization of the railway company.

The provision of the reorganization plan for setting aside the trust fund as above set forth was a contract between the reorganization managers, the committees, and the individual security holders who became parties to said contract for the creation of a fund to be held in trust for the payment therefrom of specified services rendered or to be rendered to the individual depositing bondholders and depositing stockholders, and was for the benefit not only of the parties to said agreement but also of such persons as might render services of the character specified to be paid therefrom. On information and

belief the petitioner alleges that the services rendered by the reorganization managers, and the committees, their counsel, and the depositaries and sub-depositaries under the reorganization plan were rendered in reliance upon the creation of said trust fund.

Pending the consummation of the reorganization and the creation of the trust fund, the reorganization plan gave to the reorganization managers a lien upon the bonds and stocks of the depositing bondholders and the depositing stockholders for the compensation and expenses of themselves and the committees.

(11) The reorganization plan provided that the reorganization managers should retain out of the trust fund for their own account an amount equal to one-fourth of one per cent upon the $230,950,796, principal amount, of outstanding bonds exchangeable for new securities under the reorganization plan, and twenty cents per share upon the 2,333,432 shares of outstanding stock of the railway company as compensation for the services of the reorganization managers to the depositing bondholders and depositing stockholders.

14 (12) On or about November 19, 1925, the reorganization plan dated June 1, 1925, was modified. A copy of said modifications is included in Exhibit A. Petitioner is advised and believes that none of said modifications is material to the issues involved in this case. Thereafter the Roosevelt Committee and the Iselin Committee supported the reorganization plan. The Jameson Committee continued its opposition, and the petitioner is informed and believes and therefore alleges that the reorganization managers and the committees continued to incur large obligations for counsel fees, advertising, printing, and otherwise in representing the interests of the depositing bondholders and the depositing stockholders.

(13) On April 26, 1926, the properties of the railway company were ordered to be sold by this court's final decree of foreclosure and sale, and ancillary decrees of sale were entered in all the courts in which receivers of the property of the railway company had been appointed. The dissenting security holders represented by the Jameson Committee sought both in the Circuit Court of Appeals for the Seventh Circuit and in the Supreme Court of the United States to prevent the carrying out of the sale pursuant to said decree.

On November 22, 1926, said properties were sold at Butte, Montana, pursuant to said decrees, to Robert T. Swaine and Donald C. Swatland, who purchased them as agents for the reorganization managers, who in turn were acting for the depositing bondholders and the depositing stockholders. By the decree confirming sale and approving deed of this court entered January 19, 1927, said sale was confirmed and the reorganization plan was held to be valid. The decree of this court was affirmed on appeal by the Circuit Court of Appeals for the Seventh Circuit on July 22, 1928 (20 F. (2) 808)

15 and a writ of certiorari was denied by the Supreme Court of the United States on November 28, 1927 (72 L. Ed. 220).

Said decree confirming sale provided that the deeds therein authorized should not be delivered to the new company until it should

have been authorized by the commission to issue the securities provided to be issued under the reorganization plan, and the purchasers were not required to take any part of the properties sold until after the issue of said securities.

(14) The petitioner was organized March 31, 1927, under the laws of the State of Wisconsin, to acquire control of and operate lines of railroad within and without said State. It entered into an agreement, dated April 11, 1927 (a copy of which is filed herewith, marked "Exhibit B" and made a part hereof), with Chicago, Milwaukee and Pacific Railroad Company, a railway corporation which had been theretofore organized under the laws of the State of Delaware (hereinafter called the Delaware company), said Robert T. Swaine and Donald C. Swatland (hereinafter called the purchasers, and Kuhn, Loeb & Co. and the National City Company, as reorganization managers under the reorganization plan, by the terms of which, in consideration for the assumption of the purchase price not theretofore paid and all other liabilities in respect thereof, the purchasers and the Delaware company assigned to the petitioner all of their right, title, and interest in the properties of the railway company. Said agreement, dated April 11, 1927, further provided in substance that, in consideration for the issue and delivery upon their order of certain of its securities, as well as for the above-mentioned assumptions of liability, the reorganization managers would assign to the petitioner all of the bonds and claims of general creditors of the railway company deposited or assigned under the reorganization plan, and would pay over to the petitioner all cash received by them under the reorganization plan, other than the trust fund, and remaining
16 after making or providing for all payments therefrom permitted or contemplated by the reorganization plan or said agreement which the reorganization managers in their uncontrolled discretion might make for the purpose of effecting any of the purposes of the reorganization plan, all of which payments the petitioner expressly authorized and approved. Said agreement dated April 11, 1927, expressly excepted from the cash to be paid to the petitioner the trust fund; and it expressly excepted from the obligations assumed by the petitioner, or to be paid out of any cash to which it might become entitled under the terms of said agreement of April 11, 1927, the compensation and expenses which under the reorganization plan were to be paid out of the trust fund.

The petitioner thus became the new company provided for in the reorganization plan.

(15) After entering into said agreement, dated April 11, 1927, and under the provisions of the applicable sections of the interstate commerce act, the petitioner applied to the commission in its application, dated April 11, 1927 (a copy of which, excepting certain schedules not pertinent, is filed herewith, marked "Exhibit C" and made a part hereof), (1) for authority to acquire and operate the lines of railroad formerly of the railway company; (2) for a certif-

icate that the public convenience and necessity required such acquisition and operation; (3) for authority to assume any lease or any traffic, trackage, terminal, crossing, or operating agreement, or other contract not fully performed, made by the railway company, or any predecessor company, or the receivers of the railway company, including any obligations as lessor, lessee, guarantor, indorser, surety or otherwise, in respect of the securities of any other person, natural or artificial, and any mortgage upon said property which had not been foreclosed; (4) for authority to issue its fifty-year five
17 per cent mortgage gold bonds, five per cent convertible adjustment mortgage gold bonds, preferred stock and common stock as provided for in the reorganization plan; and (5) for authority to issue general mortgage five per cent gold bonds, series D, of the railway company, at any time in the treasury of the petitioner, for refunding underlying bonds and for additions and betterments.

(16) By its certificate and order, entered January 4, 1928 (a copy of which is filed herewith, marked "Exhibit D" and made a part hereof), the commission authorized (1) the acquisition and operation by the petitioner of the lines of railroad formerly owned and/or operated by the railway company; (2) the acquisition of control of the subsidiary companies of said railway company designated in said order; (3) the issue by the petitioner of its preferred stock, common stock, fifty-year five per cent mortgage gold bonds, and five per cent convertible adjustment mortgage gold bonds, as provided for in the reorganization plan; and (4) the assumption by the petitioner of the securities designated in said order. Authority to issue the general mortgage five per cent gold bonds, series D, of the railway company was denied without prejudice. That paragraph of said certificate and order which authorized the issue of the securities above mentioned contained the following provision: "Provided, however, and the authority herein is granted upon the express condition, that the applicant (being the petitioner herein) * * * shall impound in a separate fund the money received from the payment by holder of preferred and common stock in an amount equal to $4 a share, which shall not be paid out unless and until so authorized by order of the court in respect to payments subject to the court's jurisdiction or by the commission."

(17) On January 12, 1928, the petitioner, in accordance with
18 said agreement, dated April 11, 1927, and said certificate and order of the commission entered January 4, 1928, issued to the reorganization managers $106,395,096, principal amount, of petitioner's fifty-year five per cent mortgage gold bonds, $182,873,693 of the petitioner's five per cent convertible adjustment mortgage gold bonds, $118,845,800, par amount, of the petitioner's preferred stock, and 1,174,045 shares of petitioner's common stock, without par value, in consideration of the transfer to the petitioner of the property of the railway company and the obligation of the reorganization

managers to pay to the petitioner, or to apply to the expenses of the reorganization plan other than those to be paid out of the trust fund (such as additions and betterments; new equipment and other capital expenditures; working capital; settlement of claims; expenses of foreclosure and receivership over which the court has jurisdiction, including compensation and expenses of trustees; organization, franchise, or other taxes, including stamps; compensation and expenses of engineers and accountants; expenses in connection with printing, engraving, and listing certificates of deposit and new securities, advertising, etc.) the cash to be received by the reorganization managers other than the trust fund. The petitioner is informed and believes that reorganization managers in reliance on the trust fund and on the provisions of said agreement, dated April 11, 1927, applied to the payment of this court for the properties of the railway company, the bonds of the depositing bondholders, and thus surrendered their lien on said bonds provided for in the reorganization plan. Thereafter, the reorganization managers from time to time distributed the securities of the petitioner so issued to them to the depositing bondholders and to the depositing stockholders in accordance with the provisions of the reorganization plan, likewise surrendering a similar lien on said securities, and from time to time received from the depositing stockholders the payments re-
19 quired by the reorganization plan to be made by them. Under the provisions of the reorganization plan the depositing stockholders were permitted to make such payments in installments. Thereafter the reorganization managers paid to the petitioner or applied or held for its account pursuant to the agreement, dated April 11, 1927, all cash paid to them by depositing stockholders other than the trust fund. The amount of cash so paid applied or held has aggregated, to date, more than $61,758,375.81.

(18) In connection with its organization and its qualification to do business in various States, the petitioner has incurred large obligations, and there have been paid by the reorganization managers for account of the petitioner large sums of money, and in connection with the issue of its securities the petitioner has incurred large expenses for issue taxes, for printing its articles of organization, its by-laws, its several mortgages and its temporary bonds and stock certificates, for engraving its definitive bonds and stock certificates and for listing its securities upon the New York Stock Exchange. It also became obligated to pay to the trustees under its first and refunding mortgage, its fifty-year mortgage and its adjustment mortgage reasonable compensation for their services as such trustees, including their services in authenticating the bonds issued by it as aforesaid. It also incurred obligations to the transfer agent and registrar of its voting trust certificates issued in respect of its preferred stock and its common stock and for other services in connection with the issue of its stocks.

(19) The petitioner thereupon filed a supplemental application dated January 26, 1928 (a copy of which is filed herewith, marked "Exhibit E" and made a part hereof), rerequesting the commission to authorize the petitioner (1) to use for any of its corporate purposes other than the expenses of the reorganization, such sums received from the payments of the stockholders of the railway
20 company under the reorganization plan as should not be needed for the expenses of reorganization; and (2) to pay from time to time out of the moneys so received, the out-of-pocket expenses incurred and to be incurred and all amounts payable or to become payable in connection with the organization of the petitioner and its qualification in the States in which it is engaged in business, or in connection with the acquisition of the lines of railroad formerly of the railway company or the issue, transfer, and recordation of the petitioner's securities.

(20) By its supplemental order, entered March 13, 1928 (a copy of which is filed herewith, marked "Exhibit F" and made a part hereof), the commission modified its order entered January 4, 1928, and authorized the petitioner (1) to use for its lawful corporate purposes, other than for the expenses of reorganization, such sum or sums of money as should not be needed for the reorganization expenses; (2) to pay, from time to time, the out-of-pocket expenses paid and incurred or to be incurred, up to certain amounts specified in the supplemental order; and (3) to pay any and all taxes or governmental charges in connection with the organization of the petitioner, its qualification in the States in which it is engaged in business, and the issue, transfer, and recordation of its securities. Said supplemental order further provided that the petitioner should, before the 15th day of each month, file with the commission a duly authenticated report of the amounts actually received and used for the corporate purposes of the petitioner, the actual expenditures made or incurred and the particular purposes for which expended in lieu of the estimates given in the supplemental application, and the amounts expended for taxes or other governmental charges as hereinabove mentioned. Pursuant to said supplemental order the petitioner filed with the commission its reports, dated April 14, 1928, May 12, 1928, June 14, 1928, July 14, 1928, August 14, 1928, and September 12, 1928 (copies of which are filed herewith marked "Exhibits
21 G," "H," "I," "J," "K," and "L," respectively, and made a part hereof). The amounts so reported in respect of expenditures made out of moneys received by the petitioner, or to which it was entitled, out of payments made by depositing stockholders under the reorganization plan, aggregated $61,758,375.81, which is greatly in excess of the amount which the commission ordered the petitioner to impound, and with reference to expenditures from which said reports were required.

(21) Subsequent to the entry of the supplemental order, dated March 13, 1928, the petitioner received from the corporate trustees

under its fifty-year mortgage and adjustment mortgage for their services in connection with the authentication of the original issues of its fifty-year five per cent mortgage gold bonds and five per cent convertible adjustment mortgage gold bonds, and from the transfer agent and registrar for its voting trust certificates for preferred stock and common stock, for their services in connection with signing, issuing, and registering the original issues of said voting trust certificates, bills in amounts aggregating $180,437.80, which charges are fair and reasonable, and are, and were at the time, due and owing by the petitioner and unpaid. On or about May 22, 1928, the petitioner filed with the commission its second supplemental application to the commission, dated May 22, 1928 (a copy of which is filed herewith, marked "Exhibit M" and made a part hereof), requesting authority to pay the charges of said corporate trustees of the fifty-year mortgage and adjustment mortgage and of said transfer agent and registrar of its voting trust certificates. The commission has entered no order upon said second supplemental application, dated May 22, 1928, and representatives of the commission have stated to the petitioner that the authority therein applied for will not be granted and no further authority will be granted to the petitioner for the payment of any of the expenses of the reorganization for which
22 the petitioner is liable under the provisions of said agreement dated April 11, 1927, unless and until the petitioner obtains the entire trust fund from the reorganization managers and impounds the same in a separate fund, to be paid out only when, and not to be paid out unless and until, the petitioner is so authorized by the commission. Representatives of the commission have further advised representatives of the petitioner that the commission will not permit the payment out of the trust fund of any moneys for compensation, fees or disbursements of parties entitled to payment therefrom until after a hearing before the commission as to the amounts payable for such compensation, fees, and disbursements and the fixing by the commission of such amounts, and then only the amounts so fixed.

(22) Under the provisions of the reorganization plan the trust fund was created by agreement between the reorganization managers, the committees, and the individual holders of stock and bonds of the railway company who became parties to the reorganization plan, in order to provide for the payment of services rendered to such holders of securities by the reorganization managers, the committees, their counsel, the depositaries, and subdepositaries, and of their disbursements. The petitioner was not a party to the reorganization plan but by said agreement dated April 11, 1927, recognized the existence of the trust fund. The services so rendered and disbursements so made were not rendered to the petitioner or to any other party under the jurisdiction of the commission, but to individuals in all parts of the world who deposited securities of the railway company under the reorganization plan. The petitioner is informed and believes and therefore alleges that such services were

in large part rendered and such disbursements were made prior to said certificate and order of the commission entered January 4, 1928, and in reliance upon the trust fund to be created for their payment. The petitioner has not received and has not
23 at any time had and does not now have any right to receive the trust fund nor has it any interest therein.

(23) Notwithstanding the aforesaid, petitioner is advised and believes that the defendants and each of them interpret said certificate and order (but as petitioner is advised and believes, erroneously) as making it the duty of the petitioner to obtain the trust fund from the reorganization managers and to impound the same in a separate fund to be paid out only when, and not to be paid out unless, until and as authorized by further orders of the commission, and further, as prohibiting the making by the reorganization managers, who are the trustees of the trust fund, or otherwise, of any payments out of the trust fund for any of the purposes for which the same was created, except as so authorized by the commission, and further as prohibiting petitioner from paying, out of the moneys received by it from the reorganization managers, to the corporate trustees under its fifty-year mortgage and under its adjustment mortgage, or to the transfer agent or registrar of its voting trust certificates, or to any other person performing services in connection with the reorganization and for which the petitioner has assumed liability, compensation for the services rendered by them unless and until said payment or payments and the amount thereof shall be authorized by the commission.

Petitioner is informed and believes that if said certificate and order be so interpreted it is void and beyond the power and authority of the commission to make. The petitioner is advised and believes that the commission is without power or authority (1) to require the petitioner to obtain any part of the trust fund, or (2) to require parties who have rendered services, the compensation for which is payable out of the trust fund, to waive their right to have the compensation for such services determined as provided in the reorganization plan, or if they do not agree upon a determination so
24 made, to have such compensation determined by trial by jury, or otherwise in accordance with the law of the State or country in which such services were rendered, or (3) to require such parties to submit to the commission for determination by the commission the amount payable for such services, or (4) to impose upon the petitioner, or any one else, any penalty in case such services are paid for out of the trust fund in amounts determined as provided in the reorganization plan, or otherwise determined in accordance with the law of the State or country in which the parties entitled to payment for such services may enforce such payment, or (5) to require the corporate trustees under the fifty-year mortgage or the adjustment mortgage of the petitioner, or the transfer agent or registrar of its voting trust certificates, or any other party who has rendered

services to the petitioner, or for which the petitioner has become liable under the provisions of said agreement dated April 11, 1927, to waive their right to a trial by jury if they can not agree with the petitioner upon the amounts payable for services rendered by them to the petitioner and submit to the commission for determination by the commission the amounts payable for such services or (6) to prevent the petitioner from paying, or to impose upon the petitioner any penalty for paying the amounts justly due and payable by the petitioner for said services, whether out of funds received by the petitioner under the provisions of said agreement, dated April 11, 1927, or otherwise. Nevertheless, in addition to its refusal to act upon said second supplemental application, dated May 22, 1928, unless and until the petitioner obtains the entire trust fund from the reorganization managers and impounds it as hereinbefore stated, the defendants, and each of them, have threatened, in case the petitioner shall not immediately so procure and deposit the trust fund, or if payments shall be made to said corporate trustees of the mortgages, transfer agent, or registrar for the servises rendered by them as aforesaid, or if payment shall be made out of the
25 trust fund of the compensation of the reorganization managers and the committees for their services to the depositing bondholders and the depositing stockholders, fixed as provided in the reorganization plan, or of the fees and disbursements of their counsel, or of the depositaries and subdepositaries under the reorganization plan, without in each case a prior determination by the commission as to the amounts payable for such compensation, fees and disbursements, and the fixing by the commission of such amounts, to institute criminal or civil proceedings against the petitioner, its directors, officers, attorneys, or agents for violation of its said certificate and order entered January 4, 1928, in accordance with applicable provisions of the interstate commerce act.

(24) In the premises the petitioner has no adequate remedy at law and unless the relief prayed for herein, including the issuance of a preliminary restraining order and an interlocutory or temporary injunction be granted herein to the petitioner, it will suffer, for the reasons and in the manner stated in this petition, irreparable injury and damage.

Wherefore your petitioner prays:

1. That a subpœna or subpœnas in chancery issue out of and under the seal of this honorable court, directed to the defendants, as required by law, and that due and proper service of such process and of this petition be forthwith made by filing a copy thereof in the office of the secretary of the commission, and another copy in the Department of Justice, as in said District Court jurisdiction act provided, and that thereby the defendants and each of them be required, on or before a date to be specified in such subpœna or notice, to appear herein and answer this petition, but not under oath, answer under oath being hereby expressly waived.

2. (a) That the defendants, their officers, agents, and at-
26 torneys, be perpetually restrained and enjoined from enforcing or attempting to enforce said certificate and order entered January 4, 1928, or said supplemental order entered March 15, 1928, by the institution of either civil or criminal proceedings against the petitioner, its directors, officers, agents or attorneys (1) by reason of the failure of the petitioner to obtain said trust fund from the reorganization managers; (2) by reason of the failure of the petitioner to impound said fund, as aforesaid; (3) by reason of any payment heretofore or hereafter made out of said trust fund without a prior determination by the commission of the amount so to be paid, of the compensation, fees, disbursements, and other expenses provided to be paid out of the trust fund by the reorganization plan; or (4) by reason of the payment by the petitioner without prior determination by the commission of the amount thereof of the charges of the corporate trustees under the fifty-year mortgage and adjustment mortgage of the petitioner and of the transfer agent and registrar of its voting trust certificates, or the payment of the compensation, fees, or disbursements of any or all other parties for services rendered in connection with the reorganization of the railway company or the organization of the petitioner, its acquisition of the lines of railroad formerly of the railway company or the issuance of its securities.

3. That after final hearing, this court adjudge, order, and decree that any part of said certificate and order and said supplemental order of the commission which shall be held

(a) to compel the petitioner to obtain possession of, or control over, in any manner whatsoever, said trust fund; to prohibit the payment out of the trust fund of the compensation of the reorganization managers and the committees for their services to the depositing bondholders and the depositing stockholders, fixed as provided in the reorganization plan, and the fees and disbursements of their counsel
and of the depositaries and subdepositaries under the re-
27 organization plan; to require that the compensation of the reorganization managers and the committees for their services to the depositing bondholders and the depositing stockholders, and said fees and disbursements of their counsel and of the depositaries and subdepositaries under the reorganization plan, be submitted to the commission for determination by the commission of the amounts payable in respect thereof; or to relate in any manner whatsoever to said trust fund; or

(b) to prohibit payment of the charges of the corporate trustees under the 50-year mortgage and adjustment mortgage of the petitioner, and of the transfer agent and registrar of its voting trust certificates, or the payment of the compensation, fees, or disbursements of any or all other parties for services rendered in connection with the reorganization of the railway company or the organization

of the petitioner, its acquisition of the lines of railroad formerly of the railway company, or the issue of its securities; or to require that said charges of the corporate trustees, transfer agent, and registrar, and said compensation, fees, or disbursements of any or all other parties for services rendered in connection with the reorganization of the railway company or the organization of the petitioner, its acquisition of the lines of railroad formerly of the railway company, or the issue of its securities, be submitted to the commission for determination by the commission of the amounts payable in respect thereof

is, and has at all times been, beyond the lawful authority of the commission and wholly void, and that the same be perpetually set aside, suspended, and annulled and the enforcement thereof perpetually enjoined.

4. That a temporary or interlocutory injunction be entered herein, restraining, enjoining, and suspending the enforcement of so much of said order and supplemental order of the commission as is specified in paragraph 3 until the further order of this court.

5. That pending a hearing upon the aforesaid application for a temporary or interlocutory injunction, a preliminary restrain-
28 ing order be issued in terms restraining, enjoining, and suspending the enforcement of so much of said certificate and order and supplemental order of the commission as is specified in paragraph 3, until said application for a temporary or interlocutory injunction shall have been heard and determined.

6. That your petitioner may have such other and further relief in the premises as to equity and justice may appertain and as may be deemed by this honorable court to be adequate and proper under the circumstances.

CHICAGO, MILWAUKEE, ST. PAUL AND
PACIFIC RAILROAD COMPANY,
By HENRY A. SCANDRETT, *President.*
H. H. FIELD,
O. W. DYNES,
Solicitors for Petitioner.

CHARLES EVANS HUGHES,
Of Counsel.

29 *Duly sworn to by Henry A. Scandrett; jurat omitted in printing.*

30 *Exhibit A to petition*

REORGANIZATION OF CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY

PLAN AND AGREEMENT DATED JUNE 1, 1925, WITH MODIFICATIONS OF PLAN DATED NOVEMBER 19, 1925

Kuhn, Loeb & Co., the National City Company, reorganization managers

31 MODIFICATIONS OF PLAN

Introductory statement

A substantial majority of the bonds and large amounts of preferred stock and common stock have been deposited under the plan which has been duly declared operative. Actuated, however, by a desire to give full consideration to the views of the various groups of security holders, so far as may be compatible with the essential requirements of a sound, safe, and permanent financial structure, the reorganization managers, in pursuance of the authority vested in them and with the approval of the three committees named in the plan representing, respectively, the bondholders and holders of preferred stock and common stock, have determined to modify the plan in certain respects.

In order to meet the desire of numerous savings banks, insurance companies, and similar institutions that they should receive new fixed interest-bearing bonds for a portion of their investment, the bondholders participating in the plan are to receive 20% of the principal amount of their bonds in new fifty-year five per cent mortgage gold bonds of the same issue as the bonds to be issued to stockholders on account of the cash assessment, thereby increasing the total issue of such bonds (secured by a closed mortgage) from $60,698,820 to $106,888,980. Five per cent adjustment (income) mortgage bonds described in the plan are to be issued for the remaining 80%.

In order that holders of the new adjustment (income) mortgage bonds, in recognition of their waiving a fixed interest charge in respect of 80% of their holdings, may be afforded an opportunity of sharing with the stockholders in the ultimate prosperity which it is hoped the property will achieve, the adjustment mortgage bonds are to be convertible for the life of the bonds, at the option of the holder, into preferred stock and common stock of the new company at the rate of five shares of preferred stock and five shares of common stock for each $1,000 bond.

These two modifications involve necessary minor changes. It seems necessary to call attention to only two of these changes. (a) The first is the creation of a cumulative sinking fund of $225,000 a year after April 1, 1936, for the retirement of fifty-year five per cent mortgage gold bonds. This sinking fund does not increase the

charges ahead of the stock, inasmuch as it is approximately the amount by which the sinking fund for the adjustment (income) mortgage bonds is reduced by reason of the 20% reduction in the authorized amount of such bonds and is payable only out of available net income after provision has been made for the full cumulative interest and sinking fund on the adjustment mortgage bonds. (b) To the end that the provision of the present plan in respect of income applicable to capital requirements shall remain approximately unchanged in spite of the increase of $2,309,508 in fixed interest charges, the modified plan provides that the proportion of the net income available for interest on the adjustment (income) mortgage bonds which the board of directors may apply for capital expenditures is to be two-thirds (instead of one-half) of such available income of each year, until the available income for such year shall equal $7,500,000 (instead of $10,000,000).

The reorganization managers take this opportunity to announce that in the exercise of the power vested in them under the plan they have selected, with the approval of the three committees representing, respectively, the bondholders and the holders of preferred stock and common stock, the five trustees in whom the voting power of the new stock is to be vested until January 1, 1930—that is, for the period during which the interest upon the new adjustment mortgage bonds is not cumulative. The trustees so selected are Hon. Elihu Root and Messrs. Frederick H. Ecker, Henry S. Pritchett, Samuel Rea, and W. D. Van Dyke, all of whom have agreed to serve. The first board of directors of the new company will be subject to their approval, and so long as the voting trust agreement is in force directors subsequently elected will be elected by their vote. Any vacancy among the voting trustees is to be filled by the remaining trustees as will be provided in the trust agreement.

The reorganization managers, with the approval of the three committees representing, respectively, the bondholders and the holders of preferred stock and common stock, have been willing to make
32 the modifications above summarized because they do not conflict with the fundamental requisites which the reorganization managers and the three committees have constantly kept in view. Those requisites are:

(1) That all debts of early maturity should be funded and to that end that the debt of the railway company to the United States Government, amounting to $55,000,000, should (subject to such reduction as might be obtained) be presently funded at an annual interest charge of not more than 5% and by long-term obligations junior in lien to the new financing mortgage;

(2) That the reorganized company should have moderate fixed interest charges and a financial structure that will enable it to raise the money from time to time required for capital purposes at the lowest cost and place the enterprise in a position to meet even a repetition of the unfavorable conditions of the last few years without risk of receivership;

(3) The foregoing requirements having been met, that it should be mandatory upon the reorganized company to apply all of the earnings reasonably available to the payment of 5% interest on the investment represented by the bonds participating in the reorganization; and

(4) That the relative position of the bondholders in respect of earnings as compared with the holders of preferred stock and common stock should be maintained and that the stockholders should be afforded an opportunity to participate in the plan on such a basis that their participation could, if need be, be underwritten at a moderate expense.

All these requisites are met by the modified plan. Under the modifications, the position of the new financing mortgage is unchanged. While fixed interest charges are increased by $2,309,508 they are well within present earnings as well as the lowest estimates of future earnings. There is no increase in the charges which must be met before the payment of dividends on the preferred stock and common stock. The privilege of converting adjustment mortgage bonds into preferred stock and common stock is not deemed disadvantageous to stockholders, inasmuch as it involves no increased prior charges in favor of the bonds while the stockholders would share the advantage of the strengthening of the financial structure of the enterprise which would result from the conversion of a large amount of debt into stock.

The following statement is made in the interest of stockholders: Since the promulgation of the plan a movement has been initiated by various railroad companies and organizations of holders of railroad securities to advocate legislation permitting the funding or extension for a long period at low rates of interest of the indebtedness owing by various railroad companies to the United States. This movement will naturally be supported by all those interested in Chicago, Milwaukee and St. Paul Railway Company and its securities. Inasmuch as the fate of the proposed legislation will doubtless be known before the reorganization can be consummated, it seems clearly unwise to delay the progress of the reorganization, and thereby prolong the expense of receivership and delay the realization by security holders of a return upon their investment, simply to await legislation the outcome of which can not be foretold. On the other hand, in case such legislation should be enacted during the coming session of Congress and should result in the funding, or extension for a long period, of the railway company's debt of $55,000,000 to the United States Government on terms which will meet the essential immediate and permanent requirements summarized above, thereby relieving the stockholders of the necessity of providing the funds required for the payment of the debt as provided in the present plan, depositors of stock under the modified plan may rest assured that the reorganization managers will so modify the plan as to effect substantially corresponding reductions in the amount of cash to be provided by the stockholders.

As the reorganization managers and the committees are solicitous that investors in the securities affected by the plan should not sacrifice their holdings, they take this opportunity of restating and supplementing for the benefit of stockholders the information heretofore given regarding the opportunity for stockholders to realize, by sale or loan, upon the fifty-year five per cent mortgage gold bonds which they will receive for their cash assessment. There will doubtless be a ready market for these bonds. On the basis of the present plan they are now quoted, on a when issued basis, at about 82½. Therefore, a stockholder may reasonably count on being able to reduce his cash assessment by selling his bonds at a fair price. If they are sold even at so low a price as 80, the net cash assessment would be only $8.80 per share in the case of preferred stock and $9.60 per share in the case of common stock, assuming that the railway company's debt to the United States can not be satisfactorily refunded and the assessment remains as provided in the present plan. Stockholders who prefer to keep their bonds will doubtless be able to procure
33 funds to meet the larger part of the assessment by borrowing upon the new securities from their own banks or other financial institutions. If, at the time when payments on account of the assessment must be made, any small stockholders should lack the facilities to make the necessary arrangements for the sale of their bonds or to borrow upon the new securities, as they may prefer, they are invited to communicate with the committee representing their stock, inasmuch as the stockholders committees and the reorganization managers expect to be able to assist any such stockholders to finance their participation in the plan. Such stockholders may therefore deposit their stock under the modified plan with full confidence that, if desired, suitable means will be devised to aid them to meet the required payments.

Holders of certificates of deposit for preferred stock and common stock already deposited under the plan may withdraw the stock represented thereby on or before December 24, 1925, as provided in the plan and agreement. Under the terms of the plan and agreement the modifications do not entitle depositors of bonds to withdraw from the plan.

Bonds and stock not already deposited may be deposited under the modified plan, without penalty, on or before December 24, 1925.

MODIFICATIONS OF PLAN

I

In Article IV of the plan, under the description of the new fifty-year five per cent mortgage gold bonds:

(a) Change the total authorized principal amount at any one time outstanding from "$60,698,820" to "$106,888,980."

(b) After the first sentence of such description insert the following: "The mortgage securing said bonds will provide that the new company shall, on or before April 1, 1936, and on or before April 1

in each year thereafter, so long as any of the fifty-year five per cent mortgage gold bonds shall be outstanding, pay or set apart as a sinking fund the sum of $225,000 a year out of the available net income of the new company as hereinafter defined remaining after payment of full cumulative interest and sinking fund on the adjustment mortgage bonds hereinafter mentioned; and such obligation shall be cumulative. The sinking fund shall be applied to the purchase either at public or private sale at not exceeding their principal amount, together with accrued interest, or to the redemption by lot, of fifty-year five per cent mortgage gold bonds, all bonds purchased or redeemed for the sinking fund to be kept alive and the interest paid thereon from time to time to be added to the sinking fund and applied in the same manner. The fifty-year five per cent mortgage gold bonds will be redeemable for the sinking fund only, on any interest payment date on or after April 1, 1936, at the principal amount of the bonds redeemed, together with accrued interest.

The mortgage securing said bonds will also provide that no dividends on any class of stock at the time outstanding shall be paid in any year, or set apart for payment in any year, after April 1, 1936, unless the full cumulative sinking-fund payments under said mortgage shall have been paid or set apart."

(c) In the next sentence of such description after the words "The fifty-year five per cent mortgage gold bonds will be redeemable" insert the following: "Otherwise than for the sinking fund."

(d) In the second paragraph of such description, after the words "shall be subject to the approval of," insert the following, "the bondholders committee."

(e) Change the last paragraph of such description to read: "Of the authorized issue of fifty-year five per cent mortgage gold bonds, $46,190,160 principal amount are to be applied in exchange for bonds deposited under the plan at the rate of $200 principal amount of such bonds for each $1,000 principal amount of deposited bonds. The remaining $60,698,820 of such bonds are to be offered to the holders of preferred stock and common stock of the railway company deposited under the plan."

34

II

In Article IV of the plan, in the description of the new five per cent adjustment mortgage bonds:

(a) Change the name of the bonds at the head of such description to read "five per cent convertible adjustment mortgage bonds."

(b) At the beginning of the first sentence of the first paragraph of such description omit the words "the five per cent adjustment mortgage bonds" and insert instead the following: "The five per cent convertible adjustment mortgage bonds (herein called adjustment mortgage bonds)."

(c) Change the total authorized principal amount at any one time outstanding from "$230,950,800" to "$184,760,640."

(d) At the end of the first sentence of the second paragraph of such description add the following: "Or for the sinking fund under the mortgage securing the fifty-year five per cent mortgage gold bonds."

(e) In the second, third, and fourth lines of the fifth paragraph of such description omit the words "one-half of the available net income of each year until the available net income of such year shall equal $10,000,000, and all of the available net income of each year in excess of $10,000,000" and insert instead the following words: "One-third of the available net income of each year until the available net income of such year shall equal $7,500,000, and all of the available net income of each year in excess of $7,500,000."

(f) At the end of the fifth paragraph of such description insert the following: "Under the adjustment mortgage, or, when full cumulative sinking-fund payments thereunder to date shall have been paid, for the sinking fund under the mortgage securing the fifty-year five per cent mortgage gold bonds."

(g) At the end of the seventh paragraph of such description insert the following: "The adjustment mortgage bonds will be convertible at the option of the holder into preferred stock and common stock of the new company at the rate of five shares of preferred stock and five shares of common stock for each $1,000 bond with appropriate adjustment of interest and dividends as shall be provided in the adjustment mortgage."

(h) Change the last paragraph of such description to read: "The entire authorized issue of adjustment mortgage bonds (except such amount as may be issued in connection with the liquidation of the 6% note of the railway company dated November 1, 1920, held by the United States Government) is to be applied in exchange for bonds deposited under the plan at the rate of $800 principal amount of such bonds for each $1,000 principal amount of deposited bonds."

III

In Article IV of the plan, under the description of the preferred stock—

(a) Change the authorized amount of preferred stock from "2,000,000 shares of the par value of $100 each" to "2,923,804 shares of the par value of $100 each."

(b) In the last paragraph of such description, after the words "will be reserved for future issue," insert the following: "In connection with the conversion of adjustment mortgage bonds and."

IV

In Article IV of the plan, change the description of the common stock to read—

"The authorized amount of common stock shall consist of 2,097,917 shares, which shall be without par value, or may have such par value as the reorganization managers shall determine.

Of the authorized issue of the new common stock 1,174,113 shares are to be offered to holders of common stock of the railway company deposited under the plan and the remainder of the authorized issue will be reserved for future issue in connection with the conversion of adjustment mortgage bonds."

35 V

In Article V of the plan change the description of the voting trust to read:

"All of the preferred stock and common stock of the new company issued in connection with the reorganization shall be deposited under a trust agreement, in such form and with such terms (which may include the pledge of the stock as additional security for the adjustment mortgage bonds) as the reorganization managers, with the approval of the five persons named below to act as voting trustees, shall determine, and under which the entire voting power in respect of the stock shall be vested in five voting trustees who, except as hereinafter otherwise provided shall be the following persons: Hon. Elihu Root and Messrs. Frederick H. Ecker, Henry S. Pritchett, Samuel Rea, and W. D. Van Dyke. The first board of directors of the new company shall be subject to their approval. In case of the inability to act, for any cause, of any voting trustee the remaining voting trustees shall designate his successor. The trust created by the trust agreement shall continue until January 1, 1930. If before the execution of the trust agreement any of said five persons should be unable to serve, any vacancy or vacancies caused thereby shall be filled by the remainder of said five persons. Provision may be made in the trust agreement for extensions of the period thereof with the consent, either in writing or at a meeting, of the holders of a majority in amount of trust certificates of each class. All references in the plan and agreement to the delivery of preferred stock or common stock of the new company shall be understood to mean and include trust certificates in respect of such stock."

VI

In Article VI of the plan, under the description of the treatment of deposited securities, change the description of the treatment of deposited bonds to read (Sec. VI of plan):

"Depositors of four per cent bonds, due 1925, European loan bonds, four and one-half per cent bonds, due 1932, four per cent bonds, due 1934, Puget Sound bonds, refunding bonds, series A and series B, with all coupons maturing after February 1, 1925, will receive on the completion of the reorganization and surrender of their certificates of deposit in negotiable form, together with such certificates as may be required under the Federal or State income tax laws, for each $1,000 principal amount thereof $200 principal amount of new fifty-year five per cent mortgage gold bonds bearing interest from February 1, 1925, and $800 principal amount of new

five per cent adjustment mortgage bonds, interest upon which is to be computed from February 1, 1925, and, in cash, the interest accrued upon their deposited bonds at the rate expressed therein to February 1, 1925, but without interest thereon."

VII

As the result of the foregoing modifications appropriate changes will be deemed to have been made in Article II of the plan in the estimate of the surplus earnings of the system for 1925 available for capital expenditures and working capital, in Article III of the plan in the statement of capitalization of the system upon the consummation of the plan, in Article VIII of the plan in the schedule of participation in distribution of new securities by holders of existing securities participating in the plan, and in Article IX of the plan in the comparative table showing capitalization and interest charges, so that they shall respectively reads as follows:

Article II of the plan, last paragraph:

"In addition, it is estimated that out of the surplus earnings of the system for 1925, after providing for fixed interest charges and for the 1925 interest on the new adjustment mortgage bonds to the extent required as hereinafter provided, and out of the depreciation reserves accumulated during the year, there will be available for the payment of $3,520,500 of equipment obligations maturing during 1925 or the early part of 1926 and for other capital expenditures and working capital about $9,258,000."

36 Article III of the plan:

The capitalization of the system upon the consummation of the plan [1] will be approximately as follows:

	Authorized (including bonds in treasury, etc.)	Presently outstanding
The obligations to remain undisturbed (as hereinbefore described in detail), aggregating in principal amount as of June 1, 1925	$238,045,000	$181,370,400
The following securities to be authorized by the new company to effect the reorganization:		
(1) New first and refunding mortgage bonds	Twice par value of stock outstanding.[a]	None to be issued in the reorganization.
(2) New fifty-year five per cent mortgage gold bonds	106,888,980	106,888,980
(3) New five per cent adjustment mortgage bonds	184,760,640	184,760,640
(4) New preferred stock	292,380,400	[b] 115,931,900
(5) New common stock	[c] 2,097,917 shares without par value.	[c] 1,174,113 shares.

[a] The stock without par value which is issued in the reorganization is to be taken at $100 per share and any such stock which is issued hereafter is to be taken at the price at which it is issued, or if issued for property at the value, as determined by the board of directors, of such property, all as shall be more fully provided in the first and refunding mortgage.

[b] This amount will be increased by the amount of preferred stock applied in settlement of claims of general creditors of the railway company.

[c] The reorganization managers may in their discretion cause the common stock to be of such par value per share as they may determine.

[1] The amounts here stated may be increased by the amount of any securities which may be issued in connection with the liquidation of the 6% note of the railway company dated November 1, 1920, held by the United States Government See plan.

37 **Article VIII of the plan:**

Schedule of participation in distribution of new securities by holders of existing securities participating in the plan [1]

Existing securities		Cash adjustment of interest to Feb. 1, 1925		New fifty-year five per cent mortgage gold bonds		New five per cent adjustment mortgage bonds		New preferred stock		New common stock	
Amount	Description	Per $1,000 bond	Total amount	Per cent	Amount	Per cent	Amount	Per cent	Amount	Per cent	Amount
$11,831,515	European loan bonds	$6.66⅔	$78,876.76	20	$2,366,303	80	$9,465,212				
36,344,981	Four per cent bonds, due 1925	6.66⅔	242,299.88	20	7,268,996	80	29,075,985				
50,000,000	Four and one-half per cent bonds, due 1932	7.50	375,000.00	20	10,000,000	80	40,000,000				
33,369,000	Four per cent bonds, due 1934	3.33⅓	111,230.00	20	6,673,800	80	26,695,200				
27,175,000	Puget Sound bonds	3.33⅓	90,583.33	20	5,435,000	80	21,740,000				
43,089,000	Refunding bonds, Series A	15.00	646,335.00	20	8,617,800	80	34,471,200				
29,141,300	Refunding bonds, Series B			20	5,828,260	80	23,313,040				
115,931,900	Preferred stock			24	27,823,656			100	$115,931,900		
117,411,300	Common stock			28	32,875,164					100	1,174,113 shares.

[1] Other than the three 6% notes held by the United States Government.

Article IX of the plan:

Comparative table showing capitalization and interest charges

	Present capitalization	Present fixed interest charges	Capitalization giving effect to reorganization plan [1]	Fixed interest charges giving effect to reorganization plan [1]
Undisturbed bonds	$181,370,400	[2] $8,431,904	$181,370,400	[2] $8,431,904
Timber loan to be liquidated	2,200,000	110,000		
Notes held by U. S. Government to be paid, compromised, or settled	55,000,000	3,300,000		
Bonds to be exchanged	230,950,796	9,994,889		
Fifty-year five per cent mortgage gold bonds			106,888,980	5,344,449
Adjustment mortgage bonds			184,760,640	
Preferred stock	115,931,900		[3] 115,931,900	
Common stock	117,411,300		[4] 117,411,300	
Total	$702,864,396	$21,836,793	$706,363,220	$13,776,353

[1] The amounts here stated may be increased by the amount of any securities which may be issued in connection with the liquidation of the 6% note of the railway company dated November 1, 1920, held by the United States Government. See plan. These amounts include the new securities issued for new money.

[2] Aggregate of interest for full year at respective rates on principal amount of obligations outstanding June 1, 1925.

[3] This amount will be increased by the amount of preferred stock required to be applied in settlement of general claims against the railway company.

[4] Taking no par value common stock at $100 per share.

38 Dated New York, N. Y., November 19, 1925.

KUHN, LOEB & CO.,
THE NATIONAL CITY COMPANY,
Reorganization Managers.

The undersigned committees hereby approve the foregoing modifications of the plan and respectively recommend to the holders of bonds and preferred stock and common stock not already deposited the prompt deposit thereof under the modified plan.

Dated New York, N. Y., November 19, 1925.

Bondholders committee:

Frederick H. Ecker, chairman, Bertram Cutler, Edward D. Duffield, Samuel H. Fisher, Jerome J. Hanauer, William E. Knox, Charles E. Mitchell, Charles A. Peabody, H. F. Whitcomb.

Preferred stockholders committee:

Mortimer N. Buckner, chairman, Arthur W. Loasby, Oliver C. Fuller, John McHugh, Harold I. Pratt, committee.

Common stockholders committee:

Donald G. Geddes, chairman, George W. Davison, Bayard Dominick, Stanley Field, Walter L. Johnson, Percy A. Rockefeller, committee.

39 PLAN AND AGREEMENT, DATED JUNE 1, 1925

40 The accompanying plan of reorganization, together with the annexed agreement, has been promulgated by Kuhn, Loeb & Co. and the National City Company, reorganization managers, and

has been adopted and approved by the following committees, each of which recommends the deposit of the securities represented by it under said plan and agreement:

The committee representing holders of the following bonds of Chicago, Milwaukee and St. Paul Railway Company: Four per cent gold bonds of 1925, due 1925; four per cent fifteen-year European loan of 1910 bonds, due 1925; 4½% convertible gold bonds, due 1932; twenty-five-year four per cent gold bonds of 1909, due 1934; Chicago, Milwaukee and Puget Sound Railway Company first mortgage four per cent gold bonds, due 1949; general and refunding mortgage gold bonds, Series A and Series B, due 2014.

Frederick H. Ecker, chairman, Bertram Cutler, Edward D. Duffield, Samuel H. Fisher, Jerome J. Hanauer, William E. Knox, Charles E. Mitchell, Charles A. Peabody, H. F. Whitcomb, committee. Sanford H. E. Freund, secretary, 55 Wall Street, New York, N. Y.

The committee representing holders of Chicago, Milwaukee and St. Paul Railway Company preferred stock:

Mortimer N. Buckner, chairman, Arthur W. Loasby, Oliver C. Fuller, John McHugh, Harold I. Pratt, committee. Boyd G. Curts, secretary, 100 Broadway, New York, N. Y.

The committee representing holders of Chicago, Milwaukee and St. Paul Railway Company common stock:

Donald G. Geddes, chairman, George W. Davison, Bayard Dominick, Stanley Field, Walter L. Johnson, Percy A. Rockefeller, committee. C. E. Sigler, secretary, 80 Broadway, New York, N. Y.

41 Bonds and stock which may be deposited under the plan and agreement on the terms stated therein:

BONDS	DEPOSITARIES
Four per cent gold bonds of 1925..	United States Mortgage and Trust Company, 55 Cedar Street, New York, N. Y.
Four per cent fifteen-year European loan of 1910 bonds.	United States Mortgage and Trust Company, 55 Cedar Street, New York, N. Y.
4½% convertible gold bonds.....	Bankers Trust Company, 16 Wall Street, New York, N. Y.
Twenty-five year four per cent gold bonds of 1909.	The Farmers' Loan and Trust Company, 22 William Street, New York, N. Y.
Chicago, Milwaukee and Puget Sound Railway Company first mortgage four per cent gold bonds.	United States Trust Company of New York, 45 Wall Street, New York, N. Y.
General and refunding mortgage gold bonds, Series A and Series B.	Guaranty Trust Company of New York, 140 Broadway, New York, N. Y.

DEPOSITARIES IN EUROPE

For four per cent fifteen-year European loan of 1910 bonds.	The Equitable Trust Company of New York, Paris, France, London, England.

SUBDEPOSITARIES FOR ALL BONDS

Boston, Mass	The National Shawmut Bank of Boston.
Philadelphia, Pa	Girard Trust Company.
Pittsburgh, Pa	Union Trust Company.
Chicago, Ill	Illinois Merchants Trust Company.
St. Paul, Minn	First National Bank.
Minneapolis, Minn	Minnesota Loan & Trust Company.
Milwaukee, Wis	National Exchange Bank.
Seattle, Wash	Seattle National Bank.

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STOCK	DEPOSITARIES
Preferred stock	The New York Trust Company, 100 Broadway, New York, N. Y.
Common stock	Central Union Trust Company of New York, 80 Broadway, New York, N. Y.

SUB-DEPOSITARIES FOR PREFERRED STOCK

Boston, Mass	The First National Bank of Boston.
Philadelphia, Pa	Fidelity Trust Company.
Pittsburgh, Pa	First National Bank.
Chicago, Ill	Continental and Commercial Trust and Savings Bank.
St. Paul, Minn	Merchants National Bank.
Minneapolis, Minn	Northwestern National Bank.
Milwaukee, Wis	First Wisconsin Trust Company.
Seattle, Wash	Dexter Horton National Bank.

SUB-DEPOSITARIES FOR COMMON STOCK

Boston, Mass	Old Colony Trust Company.
Philadelphia, Pa	Bank of North America and Trust Company.
Pittsburgh, Pa	The Bank of Pittsburgh, National Association.
Chicago, Ill	First Trust and Savings Bank.
St. Paul, Minn	Northwestern Trust Company.
Minneapolis, Minn	Minneapolis Trust Company.
Milwaukee, Wis	Second Ward Savings Bank.
Seattle, Wash	National Bank of Commerce.

All bonds deposited must be in negotiable form. All stock certificates deposited must be either endorsed in blank for transfer or accompanied by proper transfers in blank duly executed, and in either case proper stamps for transfer at the place of deposit must be affixed. All bonds must bear all unpaid appurtenant coupons maturing after February 1, 1925. All references in the plan and the annexed agreement to bonds shall, unless the context otherwise requires, be deemed to include also the respective coupons stated.

43 Definitions of terms

The following terms when used in the plan and agreement of reorganization and in the introductory statement shall have the following meanings, respectively:

Reorganization managers: The firm of Kuhn, Loeb & Co. as now or hereafter constituted and the National City Company and any successor corporation by merger or consolidation.

Committees: (1) The committee representing holders of the following bonds of Chicago, Milwaukee and St. Paul Railway Company: Four per cent gold bonds of 1925; four per cent fifteen-year European loan of 1910 bonds; 4½% convertible gold bonds; twenty-five year four per cent gold bonds of 1909; Chicago, Milwaukee and Puget Sound Railway Company first mortgage four per cent gold bonds; general and refunding mortgage gold bonds, Series A and Series B, herein sometimes called the bondholders committee; (2) the committee representing holders of Chicago, Milwaukee and St. Paul Railway Company preferred stock, herein sometimes called the preferred stockholders committee; and (3) the committee representing holders of Chicago, Milwaukee and St. Paul Railway Company common stock, herein sometimes called the common stockholders committee, which are parties to the agreement of reorganization, and any committees representing any classes of securities for whose assistance in the furtherance of the plan the reorganization managers may arrange or which may become parties to said agreement as therein provided, in each case, as such committees may from time to time be constituted. The bondholders committee, the preferred stockholders committee, and the common stockholders committee are collectively called the three committees.

Railway company: Chicago, Milwaukee and St. Paul Railway Company.

System: Except where otherwise indicated by the context, all the lines of railroad now owned, leased, or controlled by the railway company or operated under trackage contracts.

Refunding mortgage: The general and refunding mortgage of the railway company to Guaranty Trust Company of New York and Alexander J. Hemphill, as trustees, dated November 1, 1913, and the indentures supplemental thereto, Merrel P. Callaway being successor individual trustee.

Refunding bonds: The bonds of the railway company issued under the refunding mortgage.

Four per cent bonds, due 1925: The four per cent gold bonds of 1925 of the railway company issued under an indenture dated December 1, 1915, between the railway company and United States Mortgage and Trust Company, as trustee.

European loan bonds: The four per cent fifteen-year European loan of 1910 bonds of the railway company issued under an indenture dated June 1, 1910, between the railway company and United States Mortgage and Trust Company and William Nelson Cromwell, as trustees.

Four and one-half per cent bonds, due 1932: The 4½% convertible gold bonds of the railway company issued under an indenture dated June 1, 1912, between the railway company and United States Trust Company of New York, as trustee, Bankers Trust Company being successor trustee.

Four per cent bonds, due 1934: The twenty-five year four per cent gold bonds of 1909 of the railway company, issued under an

indenture dated July 1, 1909, between the railway company and The Farmers' Loan and Trust Company, as trustee.

Puget Sound mortgage: The first mortgage of Chicago, Milwaukee and Puget Sound Railway Company to United States Trust Company of New York and Edward W. Sheldon, as trustees, dated January 1, 1909.

Puget Sound bonds: The bonds issued under the Puget Sound mortgage.

Undisturbed bonds: The obligations which are to remain undisturbed in the reorganization, a list of which is set forth on pages 9 and 10 of the plan.

Securities: Includes bonds, stock, equipment obligations, interest coupons, notes, and endorsements, except where otherwise indicated by the context.

Depositors: The holders, from time to time, of certificates of deposit representing securities deposited with any depositary or subdepositary subject to the plan and agreement.

New company: The corporation or corporations, whether now existing or hereafter organized, by which the new securities described in the plan shall be issued.

New securities: The securities issued in accordance with the plan, whether by one or more existing corporations or by a corporation or corporations hereafter organized.

44 Introductory statement

I

Early in 1925 the board of directors of the railway company retained Coverdale & Colpitts, engineers, to study the condition, the immediate and future capital requirements, and the earning possibilities of the system in order to aid the board in determining the action to be taken respecting the maturity, on June 1, 1925, of approximately $48,000,000 of European loan bonds and four per cent bonds, due 1925. As a result of their examination the engineers advised that even if the maturing bonds could be refunded the railway company's difficulties would not be solved and that a readjustment of its financial structure was required. The board concurred in this conclusion, feeling that the interests of the security holders would not be served by any course which would not permanently meet the railway company's difficulties. It accordingly placed the facts before Kuhn, Loeb & Co. and the National City Company and representatives of the bondholders and stockholders with a view to the cooperation in the formulation of a plan of readjustment. Through such cooperation the plan and agreement now submitted has been formulated.

On March 18, 1925, receivers of the system were appointed by the Federal courts, and it is expected that proceedings will shortly be commenced for the foreclosure of the refunding mortgage and the Puget Sound mortgage.

II

The St. Paul system comprises more than 11,000 miles of railroad, including mileage owned jointly with other companies or controlled through stock ownership and mileage leased or operated under trackage contracts. The lines east of the Missouri River radiate from Chicago and form a network in the States of Illinois, Wisconsin, Michigan, Minnesota, North and South Dakota, Iowa, Missouri, and Indiana, serving a territory which is one of the richest and most fertile in the United States. The lines west of the Missouri River extend to Puget Sound and serve a vast territory which, although at present less productive than that to the east, is susceptible of unlimited growth as its population increases and its agricultural resources are developed.

The outstanding capitalization of the system as of June 1, 1925, aggregated $702,864,396, which is at the rate of approximately $63,000 per mile. Of this, $469,521,196, or about two-thirds, is in fixed interest-bearing obligations and $233,343,200, or about one-third, is in stock.

Since the termination of Federal control in 1920 the system's earnings, even with inadequate depreciation charges, have not in any year except 1923 equalled total fixed charges, and for the year ended December 31, 1924, notwithstanding a policy of retrenchment, earnings fell short of total charges by over $1,800,000.

This inability of the system to earn its fixed charges in recent years has been in large part due to the depressed conditions which have prevailed generally in the northwest. Settlement of the country has been retarded, farmers have emigrated or cut down their buying, and a large part of the territory served by the system has, for the time being, failed to produce the volume of traffic necessary to support the system. Water competition via the Panama Canal has also had an especially adverse effect, an increasing volume of trans-continental traffic, attracted by low freight rates between the Atlantic and the Pacific, and also to the Far East, via the canal, having been diverted to water carriers. The railway company has also suffered from the large increases in wages, material costs, and taxes which have not been offset by a commensurate increase in freight and passenger rates. Passenger earnings have fallen from $31,034,000 in 1920 to $21,768,000 in 1924, due largely to motor-vehicle competition. The lack of adequate earnings has resulted in the system's equipment becoming both deteriorated in quality and insufficient in amount. In addition many of the shops on the eastern part of the system are not modern and therefore are not as efficient as they should be.

The forecast of earnings prepared by Coverdale & Colpitts indicates that it will at best be several years before the earnings equal the present fixed charges and the additional requirements, including additional rentals of approximately $800,000 per year resulting from the opening of the new union station in Chicago and interest on new

money necessary to be borrowed for essential capital expenditures. On the other hand, their forecast indicates that under conditions of reasonable prosperity in its territory the system can again be put upon a sound and profitable basis, if the new money required for improvements to road and equipment and for additional equiment is provided and the necessary relief from the present excessive fixed charges is given.

45 The program for improvements to road and equipment recommended by Coverdale & Colpitts contemplates an average expenditure for the next ten years of $7,294,000 for additions and betterments to road and $10,286,000 for new equipment and additions and betterments to existing equipment, or a total average of $17,580,000 per year. Since the receivership the receivers have ordered 6,500 freight cars and have authorized, under court orders, the construction of a new freight yard near Minneapolis and St. Paul and other improvement which the financial condition of the railway company prior to the receivership had not permitted.

III

Under its existing capital structure the railway company faced maturities during the ten years 1925 to 1934 (including equipment obligations) in approximately the following amounts:

1925	$52,840,896
1926	5,745,500
1927	27,662,500
1928	2,662,500
1929	2,662,500
1930	32,662,500
1931	2,662,500
1932	53,117,500
1933	2,662,500
1934	57,278,500
Total	239,957,396

The railway company's salable free collateral is substantially exhausted and its only medium of financing and refunding is the refunding mortgage. bonds under which are obviously not marketable because of the failure of the system's earnings to cover their interest. A large part of the above-mentioned maturities are in obligations secured under this refunding mortgage. Over $2,600,000 annually are in equipment obligations which must be paid at maturity without refunding.

IV

The bankers who are now acting as reorganization managers have given long and careful study to the financial problems of the system, extending over a considerable period during which they were cooperating with the board of directors of the railway company in endeavoring to find some way to solve the railway company's immedi-

ately pressing difficulties without the necessity of a receivership. The consummation of the plan, it is believed, will meet the problems of the system above outlined by effecting:

(a) Net reduction in the amount of fixed interest bearing securities by over $227,000,000 and a reduction of annual fixed interest charges on funded debt from about $21,800,000 to about $11,467,000. This amount, it is believed, will be so well within the earnings of the system, even under such adverse conditions as have prevailed during recent years, as to remove the risk of financial embarrassment and insure the ready sale of the new first and refunding mortgage bonds as they may be needed for future requirements.

(b) Funding of over $185,000,000 of obligations maturing during the next ten years into long-term obligations, the interest charges upon over $130,000,000 of which will be contingent upon earnings.

(c) Provision of $70,032,548 of cash to be applied as hereinafter stated, for $60,698,820 of which new fifty-year five per cent mortgage gold bonds will be issued at par and for the balance of which no new securities will be issued.

(d) Release of $18,000,000 principal amount of general mortgage bonds now pledged to secure the notes held by the United States Government. With the general mortgage bonds now in or due to the treasury of the railway company, $26,370,000, principal amount of said bonds, will thus be presently available for capital requirements, and upon the maturity in 1934 of the $14,000,000 of ten-year 6% first mortgage bonds security, gold loan bonds of 1924, which are secured by the pledge of $20,000,000 of general mortgage bonds, an additional amount of those bonds should become available.

(e) Adequate provision through the new first and refunding mortgage for financing future capital requirements and for refunding underlying bonds. No first and refunding mortgage bonds will be presently issued under the plan.

(f) Funding the unsecured claims against the railway company into stock of the new company.

(g) Payment of all the expenses of the reorganization out of that part of the payments by stockholders for which new securities are not to be issued, thus accomplishing all the foregoing advantages without expense to the creditors and without burdening the system with additional capitalization for such expenses.

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V

The reduction of fixed interest-bearing securities is accomplished by the conversion of $230,950,796 of bonds secured under the refunding mortgage and the Puget Sound mortgage into income obligations the lien of which will be subordinate to the new securities provided for the raising of new money. The stockholders can not be expected to provide the large amount of new money presently required unless (a) they are given for a substantial part of their new money a security the interest upon which is certain, (b) the new company is freed

from a constant threat of financial embarrassment through fixed interest obligations for which there is no substantial margin of earnings, and (c) future requirements are provided for by a mortgage of sufficient security to enable the sale of bonds thereunder at normal discounts and interest rates.

VI

The reorganization managers and all of the committees have concluded, after careful study and conference with Coverdale & Colpitts, that the equities of the situation require that all of the various issues of bonds secured under the refunding mortgage and the Puget Sound bonds outstanding in the hands of the public be treated alike in the allotment of new securities.

None of the several issues of bonds which are secured directly or indirectly under the refunding mortgage have any other security and, although by their terms they bear different rates of interest and mature at different dates, the defaults which have occurred or will shortly occur, together with the sale of the railway company's property upon foreclosure of the refunding mortgage and under the general creditor's bill, will result in all of them being matured, and their rights to payment out of the proceeds of the mortgaged property will be identical.

While the Puget Sound mortgage constitutes a first lien at the rate of approximately $77,107 per mile on about 2,356 miles of the 10,126 miles of the system's owned main lines and to that extent ranks ahead of the refunding mortgage, the refunding mortgage participates in the lien of the Puget Sound mortgage through the pledge under the refunding mortgage of $154,489,500, or more than 85%, of the $181,664,500 of Puget Sound bonds now outstanding. The lines of railroad embraced in the Puget Sound mortgage, although of great strategic value, lie west of the Missouri River and serve a territory which, while capable of development, has not as yet produced a volume of traffic sufficient to give those lines a value, from the point of view of earnings, comparable to the value of the lines east of the Missouri. Upon the latter lines the refunding mortgage constitutes a lien, which is subject as to most of the mileage to underlying mortgages, but which is not shared by the Puget Sound mortgage.

VII

The railway company is indebted to the United States Government upon three 6% notes:

(1) A note for $20,000,000, dated November 1, 1920, due March 1, 1930, taken by the Director General of Railroads under section 207 of the transportation act and secured by $32,000,000 of the refunding 6% bonds,

(2) A note for $25,000,000, dated March 1, 1922, due March 1, 1927, taken by the Secretary of the Treasury under section 210 of

the transportation act and secured by $12,000,000 of general mortgage 5% bonds and $30,329,000 of refunding 6% bonds, and

(3) A note for $10,000,000, dated December 15, 1922, due March 1, 1930, taken by the Secretary of the Treasury under section 210 of the transportation act and secured by $6,000,000 of general mortgage 5% bonds and $10,500,000 of refunding 6% bonds.

All those who have participated in the formulation of the plan are convinced that the interests not only of all the security holders but also of the reorganized system would best be served by the present liquidation of these notes.

Were the Government to foreclose upon its collateral and to exchange that collateral for new securities under the plan the funded debt of the new company would be increased at least $35,000,000 and its interest charges at least $1,750,000. All this increase would rank on a parity with the new securities to be issued to present bondholders, and at the same the $18,000,000 of general mortgage bonds
47 would be left outstanding and the new company deprived of their use for future requirements. Such a dilution of the security of the bondholders, and the great additional burden thus put ahead of the stockholders' equity, would be seriously detrimental both to the new company and to its security holders.

Were the debt to the Government to be extended and the new securities issuable against the present collateral, or other new securities, continued as collateral, the question of the ultimate refunding of the debt would remain unsettled and a constant drag on the new company's credit. Bonds would have to be reserved under the new first and refunding mortgage for such refunding, thereby materially weakening the value of that security and its adequacy as a provision for future capital expenditures.

Were the debt to the Government reduced to an amount which could remain upon the security of the $18,000,000 of general mortgage bonds, say $13,000,000, the new company would be deprived of the use of its best bonds for capital requirements during its first few years, and it would, therefore, be necessary to use for such purposes the new first and refunding mortgage bonds, which would naturally have to be sold at a higher interest cost than the general mortgage bonds and at a higher interest cost also than that at which it is expected the new first and refunding mortgage bonds can be sold later when the new company's credit has been established.

Of the three notes held by the Government the two taken by the Secretary of the Treasury, (2) and (3) supra, seem to be fully secured even at the depressed prices of the collateral which have prevailed since the receivership. It is therefore believed that the payment of these two notes in full would give the Government no preference to which it is not entitled, while by such payment the $18,000,000 of pledged general mortgage 5% bonds would be freed to the treasury of the new company. The plan therefore provides for such payment.

However, at the prices which have prevailed during the receivership the collateral for the note taken by the director general, (1) supra, does not fully secure that note. The plan therefore makes as alternative offers for that note either—

(a) $17,000,000 cash and $3,000,000 par value of new preferred stock, with full interest on the note to the date of settlement in cash, or

(b) $32,000,000 principal amount of new adjustment mortgage bonds, being the amount of such bonds issuable under the plan against the amount of refunding bonds now held as collateral for the note.

Several conferences have been held with the Director General of Railroads in an effort to reach a satisfactory adjustment of the note, but he has been unwilling to make any commitment at this time when any offer must necessarily be contingent upon the consummation of the plan and has expressed himself as desirous of retaining full freedom of action. It is believed, however, by the reorganization managers and the committees that offer (a) is entirely liberal to the Government and, for the reasons stated, of advantage to the new company. Offer (b) it is also believed fully recognizes the Government's position as a secured creditor through the refunding bonds held as collateral. In order to avoid or reduce the increase of capitalization which would result from the acceptance of offer (b), the reorganization managers are expressly authorized, in case said offer shall be accepted, to purchase for cancellation such principal amount of new adjustment mortgage bonds as they may determine not exceeding $32,000,000 and at such prices as they may determine not exceeding an average of 62½% of the principal amount (which is the price at which the refunding bonds are held as collateral for the note).

VIII

The issue of the new securities contemplated by the plan will be subject to the approval of the Interstate Commerce Commission, to which the necessary application will be made as soon as deposits under the plan and the foreclosure proceedings have progressed sufficiently to insure the consummation of the plan. There is every reason to hope that with the proper cooperation of the security holders the reorganization can be accomplished in a comparatively short time and the system taken out of receivership and restored to its place among the financially strong roads of the country. To that end holders of the various securities dealt with in the plan are earnestly urged to deposit their holdings subject to the plan and agreement with the respective depositaries or sub-depositaries.

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PLAN OF REORGANIZATION

I

Present capitalization

(As of June 1, 1925)

OBLIGATIONS TO REMAIN UNDISTURBED

A—Direct obligations of the railway company and other obligations assumed or guaranteed by it or secured by lien upon its property

(1) The Milwaukee and Northern Railroad Company extended 4½% first-mortgage bonds, due June 1, 1934			$2,155,000
(2) The Milwaukee and Northern Railroad Company extended 4½% consolidated-mortgage bonds, due June 1, 1934			5,092,000
(3) The Chicago and Missouri River division first-mortgage 5% bonds of the railway company, due July 1, 1926			3,083,000
(4) The bonds issued under the general mortgage of the railway company, due May 1, 1989:			
(a) Series A 4% bonds	$49,000,000		
(b) Series B 3½% bonds	8,950,000		
(c) Series C 4½% bonds	42,597,000		
(d) Series D 5% bonds[1]	46,370,000		
		$146,917,000	
Including:			
(a) Series D bonds in treasury[1]	8,370,000		
(b) Series D bonds pledged to secure notes to U. S. Government (see (18) and (19) infra)	18,000,000		
(c) Series D bonds pledged to secure ten-year bonds of 1924 (see (6), infra)	20,000,000		
		46,370,000	
			100,547,000
(5) The Bellingham Bay & British Columbia Railroad Company first-mortgage 5% gold bonds, due December 1, 1932			455,000
(6) The ten-year 6% first-mortgage bonds security gold-loan bonds of 1924 of the railway company, due January 1, 1934			14,000,000
(7) The Chicago, Milwaukee & Gary Railway Company first-mortgage 5% gold bonds, due April 1, 1948		$5,700,000	
Including: Bonds in the treasury		2,700,000	
			3,000,000

B—Obligations in respect of which the railway company has assumed liability under lease dated July 1, 1921, from the Chicago, Terre Haute & Southeastern Railway Company to the railway company

(8) The Bedford Belt Railway Company first-mortgage 5% gold bonds, due July 1, 1938		$350,000	
Including: Bonds pledged under the Chicago, Terre Haute & Southeastern Railway Company first and refunding mortgage (see (10), infra)		100,000	
			$250,000
(9) The Southern Indiana Railway Company first-mortgage 4% gold bonds, due February 1, 1951			7,287,000
(10) The Chicago, Terre Haute & Southeastern Railway Company first and refunding mortgage 50-year 5% gold bonds, due December 1, 1960		$8,557,000	

[1] This includes $3,370,000 of bonds not yet actually drawn down but now available under the terms of the general mortgage to be drawn down for the treasury of the railway company. These may be of any series.

Including:			
(a) Bonds pledged under the Southern Indiana Railway Company first mortgage (see (9), supra)	$200,000		
(b) Bonds pledged to secure 6% note due October 1, 1925 (see (12), infra)	301,000		
		$501,000	
			$8,056,000
(11) The Chicago, Terre Haute & Southeastern Railway Company income mortgage 50-year 5% gold bonds, due December 1, 1960			6,336,000
(12) The 6% note of the Chicago, Terre Haute & Southeastern Railway Company dated October 1, 1920, due October 1, 1925			167,400

49 *C—Equipment trust obligations*

(13) The 6% equipment-trust gold notes of the railway company, dated January 15, 1920	$10,955,000
(14) The 5% equipment-trust certificates of the railway company, Series A, dated July 15, 1922	7,007,000
(15) The 5% equipment-trust certificates of the railway company, Series B, dated February 1, 1923	1,280,000
(16) The 5½% equipment-trust certificates of the railway company, Series C, dated April 1, 1923	11,700,000
Total obligations to remain undisturbed	[1] 181,370,400

OBLIGATIONS TO THE UNITED STATES GOVERNMENT TO BE LIQUIDATED AS HEREINAFTER PROVIDED

(17) The 6% note of the railway company to the United States Government, dated November 1, 1920, due March 1, 1930, secured by $32,000,000 refunding bonds, Series Z	$20,000,000
(18) The 6% note of the railway company to the United States Government, dated March 1, 1922, due March 1, 1927, secured by $12,000,000 general-mortgage bonds, Series D, and $30,329,000 refunding bonds, Series Z	25,000,000
(19) The 6% note of the railway company to the United States Government, dated December 15, 1922, due March 1, 1930, secured by $6,000,000 general-mortgage bonds, Series D, and $10,500,000 refunding bonds, Series Z	10,000,000
Total	55,000,000

OTHER OBLIGATIONS TO BE LIQUIDATED

(20) The 5% loan of the railway company under the agreement dated July 2, 1924, between the railway company, Milwaukee Land Company, and the New York Trust Company, commonly known as the timber loan, due July 2, 1925. This loan is secured by stocks and obligations representing the railway company's interest in timber and farm lands and believed to be worth much more than the amount of the loan. By the terms of the loan agreement the proceeds and income from the collateral are to be applied to the payment of the loan	2,200,000

[1] In addition the obligations of the foregoing classes now in the treasury or authorized under the terms of mortgages securing undisturbed obligations to be drawn down for expenditures heretofore or hereafter made will remain undistubed and available to the new company and are included in the term undisturbed obligations unless the context otherwise requires.

OBLIGATIONS TO BE EXCHANGED FOR NEW SECURITIES

(21) The refunding bonds of the railway company, due January 1, 2014:		
(a) Series A 4½% bonds	$43,089,000	
(b) Series B 5% bonds	29,141,300	
(c) Series Z 6% bonds	117,217,200	
		$189,447,500
Including:		
(a) Series Z bonds pledged to secure notes to U. S. Government (see (17), (18), (19), supra)	72,829,000	
(b) Series Z bonds in treasury	44,388,200	
	117,217,200	
		$72,230,300
(22) The four per cent bonds, due 1925		36,344,981
(23) The European-loan bonds (other than bonds pledged to secure the four per cent bonds, due 1925—see (22), supra)		[1] 11,831,515
(24) The four and one-half per cent bonds, due 1932		50,000,000
(25) The four per cent bonds, due 1934		33,369,000
(26) The Puget Sound bonds, due January 1, 1949	$181,664,500	
Including: Bonds pledged under the refunding mortgage	154,489,500	
		27,175,000
Total obligations to be exchanged		230,950,796

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CAPITAL STOCK

(27) Preferred stock	$115,931,900
(28) Common stock	117,411,300
Total amount of stock	233,343,200
Total amount of securities of system now outstanding	[2] 702,864,396

II

Estimated cash requirements

The amount of cash estimated to be required to carry out the plan is	$70,032,548.00
To be applied to the following and such other and further purposes as may be determined by the reorganization managers or by the new company:	
(1) To pay the 6% note of the railway company, dated March 1, 1922, held by the United States Government	25,000,000.00
(2) To pay the 6% note of the railway company, dated December 15, 1922, held by the United States Government	10,000,000.00

[1] At the rate of exchange stipulated for conversion into four per cent bonds, due 1925, the European loan bonds being payable at the option of the holders in French francs or English pounds sterling.

[2] This total includes the following securities in the insurance fund of the railway company: $38,000 Milwaukee and Northern Railroad Company first mortgage bonds; $20,000 Milwaukee and Northern consolidated mortgage bonds; $759,000 general mortgage bonds of the railway company, Series A; $1,244,981 four per cent bonds, due 1925; $19,200 four and one-half per cent bonds, due 1932; $83,000 four per cent bonds, due 1934; $1,000,000 Puget Sound bonds; $11,500 refunding bonds, Series B; $86,100 preferred stock of the railway company; and $5,300 common stock of the railway company.

The railway company, with other railroad companies, has also assumed liability in respect of the principal and interest of $67,000,000 principal amount of bonds of Chicago Union Station Company (the railway company's proportion being 25%); $46,326,340 principal amount of bonds of Kansas City Terminal Railway Company (the railway company's proportion being 8⅓%); $15,500,000 principal amount of bonds of St. Paul Union Depot Company (the railway company's proportion being 11⅓%); $2,273,000 principal amount of bonds of Minnesota Transfer Railway Company (the railway company's proportion being 11⅓%); and $8,730,840 principal amount of bonds of Indiana Harbor Belt Railroad Company (the railway company's proportion being 20%).

(3) To provide for cash payment in connection with the liquidation of the 6% note of the railway company, dated November 1, 1920, held by the United States Government[1]	$17,000,000.00
(4) To provide for adjustments and payments of interest in respect of bonds deposited under the plan (see Article VI)	1,544,324.97
(5) To provide for additions and betterments, new equipment and other capital expenditures; working capital; settlement of claims; expenses of foreclosures and of the receivership over which the court has jurisdiction, including compensation and expenses of trustees; organization, franchise, and other taxes, including stamps; compensation, and expenses of engineering and accounting experts; expenses in connection with printing, engraving, and listing of certificates of deposit, new securities, etc.; advertising; syndicate commissions, and all other expenses of the reorganization (including those hereinafter mentioned), etc	16,488,223.03

From this amount a sum equal to $1.50 per share of the existing preferred stock and common stock of the railway company will be set aside to provide for the compensation of the reorganization managers and the committees fixed as hereinafter on page 22 provided, and the fees and disbursements of their counsel and all depositaries and subdepositaries, any balance of said sum to be paid over to the new company as additional working capital or, if the reorganization managers in their discretion shall so determine, to be returned pro rata to the holders of certificates of deposit for stock.

PROVISION FOR CASH REQUIREMENTS

The foregoing cash requirements are to be met, as hereinafter provided, by payments of $28 per share by the holders of the $115,931,900 existing preferred stock of the railway company and of $32 per share by the holders of the $117,411,300 existing common stock of the railway company, for which only $60,698,820 of new bonds will be issued	70,032,548.00
In addition it is estimated that out of the surplus earnings of the system for 1925, after providing for interest on the undisturbed obligations and the 1925 interest on the new adjustment mortgage bonds to the extent required as hereinafter provided, and out of the depreciation reserves accumulated during the year, there will be available for the payment of $3,520,500 of equipment obligations maturing during 1925 or the early part of 1926 and for other capital expenditures and working capital about	9,412,000.00

51

III

The new company

The reorganization may be accomplished by the foreclosure or enforcement of existing mortgages, by the sale of the properties of the railway company under the general creditors' bill, by the utilization of any existing corporation or corporations, or by the organization of a new corporation or corporations under the laws of such State or States as the reorganization managers may determine and

[1] If offer (a) Section VII, is not accepted, this amount may be applied toward the purchase for cancellation of new adjustment mortgage bonds, as explained in Section VII, any balance to be paid to the new company as additional working capital or for other capital purposes.

which shall own or control the properties of the railway company, with such exceptions and additions as the reorganization managers may in their discretion determine with the approval of a majority of the three committees. As far as deemed advisable and as may be allowed by law, it is intended to vest directly in the new company title to the lines of railroad to be embraced in the reorganization, so that, as far as deemed practicable by the reorganization managers, the new mortgages may be direct liens in their order of priority. In case delay should occur in acquiring any of the lines of railroad embraced in the plan, the execution of the plan will not necessarily be postponed for that reason, but existing bonds upon such lines deposited under the plan may be pledged under the new mortgages.

It is contemplated that the new company will deliver the new securities provided for by the plan in respect of the acquisition by it of the properties and securities to be vested in it pursuant to the plan.

The capitalization of the system upon the consummation of the plan [1] will be approximately as follows:

	Authorized (including bonds in treasury, etc.)	Presently outstanding
The obligations to remain undisturbed (as hereinbefore described in detail), aggregating in principal amount as of June 1, 1925	$238,045,000	$181,370,400
The following securities to be authorized by the new company to effect the reorganization:		
(1) New first and refunding mortgage bonds	Twice par value of stock outstanding.[1]	None to be issued in the reorganization.
(2) New fifty-year five per cent mortgage gold bonds	60,698,820	60,698,820
(3) New five per cent adjustment mortgage bonds	230,950,800	230,950,800
(4) New preferred stock	200,000,000	[2] 115,931,900
(5) New common stock	[3] 1,174,113 shares without par value.	[3] 1,174,113 shares.

[1] The stock without par value which is issued in the reorganization is to be taken at $100 per share and any such stock which is issued hereafter is to be taken at the price at which it is issued, or, if issued for property at the value as determined by the board of directors of such property, all as shall be more fully provided in the first and refunding mortgage.

[2] This amount will be increased by the amount of preferred stock applied in settlement of claims of general creditors of the railway company.

[3] The reorganization managers may in their discretion cause the common stock to be of such par value per share as they may determine.

IV

Description of new securities

Except as hereinafter otherwise specifically provided, the form and terms of all bonds authorized or issued, of the mortgages and deeds of trust under which they shall be issued, of any certificate of incorporation or articles of association or amendment thereof, of any stock certificates or other instruments relating to the preferred stock or the common stock of the new company, and of all other

[1] The amounts here stated may be increased by the amount of any securities which may be issued in connection with the liquidation of the 6 per cent note of the railway company, dated November 1, 1920, held by the United States Government.

instruments deemed by the reorganization managers to be necessary or proper in connection with the plan shall be such as the reorganization managers shall in their discretion determine. All bonds issued in the reorganization will be payable in New York City in gold coin of the United States of America of or equal to the standard of weight and fineness as it existed on February 1, 1925, and all, or any part, of the new adjustment mortgage bonds as the reorganization managers may in their discretion determine may also be made payable at the option of the holders at such place or places in France and England as the reorganization managers shall determine in French francs or in English pounds sterling at the gold parity of exchange.

52 The new securities may be issued in temporary form in the first instance or interim certificates may be issued therefor. Scrip may be issued and distributed in lieu of fractions of a share of stock or of bonds of any denomination not exceeding $1,000. Such scrip may be non-interest or non-dividend bearing, but shall be exchangeable for new securities when presented in proper multiples on terms and conditions approved by the reorganization managers.

The new company is to authorize the following securities:

First and refunding mortgage bonds

The total authorized principal amount of first and refunding mortgage bonds at any one time outstanding, together with any bonds reserved under the first and refunding mortgage for refunding underlying securities, shall be limited to twice the aggregate par value of the stock of the new company of all classes at the time issued and outstanding, the stock without par value which is to be issued in the reorganization to be taken at $100 per share, and any such stock issued hereafter to be taken at the price at which it is issued, or if issued for property at the value, as determined by the board of directors of the new company, of such property, all as shall be more fully provided in the first and refunding mortgage. The first and refunding mortgage bonds will be secured by a mortgage and deed of trust to a trustee or trustees to be selected by the reorganization managers, which will embrace (with such exceptions as the reorganization managers in their discretion may determine) all railroads and other property, including stocks and bonds of subsidiary companies (but not including obligations of the classes to remain undisturbed under the plan) acquired by the new company in the reorganization and all properties thereafter acquired by the use of first and refunding mortgage bonds or their proceeds. The first and refunding mortgage will be a lien on the owned lines subject, as to various parts of the mileage, to an authorized amount of approximately $191,893,000 of undisturbed underlying bonds, and a lien upon the leasehold interest in the Chicago, Terre Haute & Southeastern Railway Company's lines (upon which there will remain an authorized amount of approximately $26,250,000 of obligations in respect of which the rail-

way company has assumed liability under the lease) and upon the stock of the Chicago, Milwaukee & Gary Railway Company (upon the lines of which there is an authorized amount of approximately $20,000,000 of bonds, $3,000,000 whereof have been guaranteed by the railway company and are outstanding, and an additional $2,700,000 whereof are owned by the railway company). For the refunding of all of the underlying bonds, including those on the leased and controlled lines, first and refunding mortgage bonds will be reserved. The first and refunding mortgage will provide restrictions for the release from the lien thereof of property subject thereto.

The first and refunding mortgage bonds may be issued in separate series, maturing on the same or different dates and bearing interest at the same or different rates, payable on the same or different dates, and any series may be of such principal amount, mature on such date or dates, be redeemable in whole or in part at such times, on such notice and at such premiums, and may have such conversion privileges and other provisions as may be determined by the board of directors at the time of the creation of such series and be stated in the bonds of such series. The new company will have the right upon the retirement of any series in whole or in part (other than upon conversion into stock or through any sinking fund or by the application of proceeds of released property) to issue, for such purposes and under such restrictions as may be prescribed in that behalf in the mortgage, a like aggregate principal amount of bonds of another series or of other series, bearing the same or different rates of interest as the bonds retired and with such maturity or maturities and with such other provisions as the board of directors may determine. Provision may be made that, if so determined, the principal or interest, or both, of any of the first and refunding mortgage bonds of any series may be made payable (a) in the city of New York only, or (b) in said city and also in one or more other cities in the United States or foreign cities or countries, or (c) only in one or more foreign cities or countries. The bonds of any series which shall be payable as to principal or interest, or both, in the United States of America shall be payable in gold coin of the United States of America of or equal to the standard of weight and fineness existing at the date of the coupon bonds of such series and may be made payable without deduction for any tax, assessment, or governmental charge which the new company or the trustee or trustees under the first and refunding mortgage may be required or permitted to pay thereon or to retain or deduct therefrom under any present or future law of the United States or of any State, county, or municipality or other taxing authority therein. In case any bonds of any series shall be payable as to principal or interest, or both, in any foreign country or countries, such bonds may be made payable in the currency or the respective currencies there current, at fixed rates of exchange, and may contain appropriate provisions as may be requisite or expedient to conform to the requirements of law or of commercial usage in the foreign country or countries in which they may be made payable, including

provisions requiring the payment of the principal or interest thereof without deduction for taxes, foreign or domestic.

53 The first and refunding mortgage bonds shall be issuable, under restrictions and conditions to be determined by the reorganization managers and expressed in the first and refunding mortgage, only for the purpose of providing for betterments, improvements and extensions, and for the acquisition of additional property and equipment, and for the purchase, redemption, retirement, refunding, or payment of bonds and other obligations secured by liens, prior to the lien of the first and refunding mortgage, upon any of the property which, or a leasehold interest in which, may at the time be subject to the first and refunding mortgage, and for such other corporate purposes as shall be stated in the mortgage. A sinking fund, to be determined by the reorganization managers, shall be provided for any bonds issued in respect of equipment. After the principal amount of bonds issued for capital expenditures other than refunding presently outstanding undisturbed obligations shall have aggregated $150,000,000, bonds may be issued only for 80% of such expenditures.

No first and refunding mortgage bonds are to be issued in the reorganization.

Fifty-year five per cent mortgage gold bonds

The fifty-year five per cent mortgage gold bonds will be limited to a total authorized principal amount of not exceeding $60,698,820 at any one time outstanding, will mature in 1975, will bear interest payable semi-annually at the rate of five per cent per annum, and will be secured by a mortgage and deed of trust to a trustee or trustees to be selected by the reorganization managers, which is to embrace the properties embraced in the first and refunding mortgage and from time to time becoming subject thereto, subject, however, to the first and refunding mortgage and to the prior payment out of the mortgaged property of all bonds at any time issued and outstanding under the first and refunding mortgage. The fifty-year five per cent mortgage gold bonds will be redeemable, at the option of the new company, on any semi-annual interest payment date at the principal amount of the bonds redeemed, together with accrued interest and a premium, to and including five years from the date of maturity, of 5% of the principal amount, and thereafter, at a premium equal to one-half of one per cent for each six months from the date of redemption to the date of maturity. The mortgage securing said bonds will provide restrictions for the release from the lien thereof of property subject thereto.

The form of the fifty-year five per cent mortgage gold bonds and of the mortgages securing them shall be subject to the approval of the preferred stockholders committee and the common stockholders committee.

The entire authorized issue of fifty-year five per cent mortgage gold bonds is to be offered to holders of the preferred stock and common stock of the railway company under the plan.

Five per cent adjustment mortgage bonds

The five per cent adjustment mortgage bonds will be limited to the total authorized principal amount at any one time outstanding of not exceeding $230,950,800 plus any amount thereof which may be issued in connection with the liquidation of the 6% note of the railway company, dated November 1, 1920, held by the United States Government (see Sec. VII), and will mature January 1, 2000. They will be secured by a mortgage and deed of trust to a trustee or trustees to be selected by the reorganization managers, which is to embrace the properties embraced in the first and refunding mortgage and from time to time becoming subject thereto, subject, however, to the first and refunding mortgage and to the mortgage securing the fifty-year five per cent mortgage gold bonds and to the prior payment out of the mortgaged property of all bonds at any time issued and outstanding under said mortgages. The adjustment mortgage will provide restrictions for the release from the lien thereof of property subject thereto.

The adjustment mortgage bonds will bear interest, payable annually or semi-annually, at the rate of five per cent per annum, but required to be paid, prior to the maturity of the principal as hereinafter provided, only out of the new company's net income ascertained in accordance with the accounting rules of the Interstate Commerce Commission, or other analogous Federal authority, from time to time in force, but without deduction for interest on the adjustment mortgage bonds or for the sinking fund under the adjustment mortgage. The net income of the new company thus to be applicable to the payment of interest on the adjustment mortgage bond is herein called the available net income. The interest on the adjustment mortgage bonds will be non-cumulative prior to January 1, 1930, but will be cumulative from and after January 1, 1930, but accumulations of interest shall not bear interest. At the maturity of the principal all arrears of cumulative interest shall be payable. Interest on the adjustment mortgage bonds issued in exchange for bonds deposited under the plan shall be computed from February 1, 1925, to which date interest on the deposited bonds is to be adjusted as provided in Article VI. Interest on any adjustment mortgage
54 bonds which may be issued in connection with the liquidation of the 6% note of the railway company, dated November 1, 1920, held by the United States Government, shall be computed or adjusted from the date to which interest is paid on said note. (See Sec. VII.)

The adjustment mortgage will provide that the new company shall on or before April 1, 1936, and on or before April 1 in each year thereafter, so long as any of the adjustment mortgage bonds

shall be outstanding, pay or set apart as a sinking fund, as hereinafter provided out of the available net income of the new company remaining after payment of full cumulative interest on the adjustment mortgage bonds, an amount equal to one-half of one per cent of the authorized principal amount of the adjustment mortgage bonds; and such obligation shall be cumulative. The sinking fund shall be applied to the purchase either at public or private sale at not exceeding their principal amount, together with full cumulative interest, or to the redemption of adjustment mortgage bonds, all bonds purchased or redeemed for the sinking fund to be kept alive and the interest paid thereon from time to time to be added to the sinking fund and applied in the same manner.[1] Adjustment mortgage bonds will be redeemable for the sinking fund only, on any interest payment date on or after April 1, 1936, at the principal amount of the bonds redeemed together with full cumulative interest.

The adjustment mortgage will provide that until January 1, 1930, the date after which interest on the adjustment mortgage bonds will become cumulative, no dividends on any class of stock at the time outstanding shall be paid in any year, or set apart for payment in any year, unless interest on the adjustment mortgage bonds for such year at the full rate of five per cent per annum shall have been paid or set apart for payment; and that no dividends on any class of stock at the time outstanding shall be paid in any year, or set apart for payment in any year, after January 1, 1930, unless the full cumulative interest on the adjustment mortgage bonds shall have been paid or set apart for payment, and after April 1, 1936, unless, in addition to said interest, the full cumulative sinking fund payments under the adjustment mortgage shall have been paid or set apart.

The adjustment mortgage will further provide that all of the available net income of the new company for each year beginning January 1 may be applied, and that one-half of the available net income of each year until the available net income of such year shall equal $10,000,000, and all of the available net income of each year in excess of $10,000,000 shall be required to be applied, so far as necessary therefor, to the payment of interest on the adjustment mortgage bonds and thereafter, beginning April 1, 1936, to the sinking fund under the adjustment mortgage, including all accumulations of both interest and sinking fund during the cumulative period. Interest on the adjustment mortgage bonds will, however, be required to be paid only in multiples of a quarter of one per cent, smaller fractional amounts being carried forward and added to that portion of the available net income of the new company for the ensuing year required to be applied to the payment of interest and sinking fund on the adjustment mortgage bonds. Any remaining available net income of the new company of any year until January 1, 1930, for

[1] If the sinking fund instalments and all interest on the bonds in the sinking fund are regularly paid without accumulation, the entire issue will be retired by 1986.

which interest on the adjustment mortgage bonds at the full rate of five per cent per annum shall not have been paid or set apart for payment, and any remaining available net income of the new company of every year thereafter for which full cumulative interest and full cumulative sinking fund payments shall not have been paid or set apart for payment, will be required to be carried into a separate account available only for expenditures chargeable to capital account under the accounting rules of the Interstate Commerce Commission or other analogous Federal authority, from time to time in force, or for providing for discounts on securities sold, or, as to that part of the special account arising from available net income accruing after January 1, 1930, for instalments of cumulative interest on the adjustment mortgage bonds, or, when full cumulative interest on the adjustment mortgage bonds to date shall have been paid, for the sinking fund.

For the purpose of determining the available net income for any period from and after February 1, 1925, before the mortgaged lines of railroad embraced in the plan shall have been delivered to the new company, the gross income of the railway company or of the receivers of the system for such period shall be deemed gross income of the new company for such period and shall be subject only to such deductions, including proper depreciation charges, as would have been made if the mortgaged lines of railroad had been owned and operated by the new company during such period and the bonds secured under the refunding mortgage and the Puget Sound bonds had been exchanged under the terms of the plan on February 1, 1925, for new adjustment mortgage bonds. For the period February 1, 1925, to December 31, 1925, however, eleven-twelfths of the gross income for the year 1925 shall be taken.

The adjustment mortgage bonds will be redeemable otherwise than for the sinking fund, at the option of the new company, in whole or in part, on any interest payment date on or after October 1, 1930, at 105% of the principal amount of the bonds redeemed together with full cumulative interest.

55 The form of the adjustment mortgage bonds and of the adjustment mortgage shall be subject to the approval of the bondholder's committee.

The entire authorized issue of adjustment mortgage bonds (except such amount as may be issued in connection with the liquidation of the 6% note of the railway company dated November 1, 1920, held by the United States Government, see Sec. VII) is to be applied in exchange for bonds deposited under the plan as follows:

For four per cent bonds, due 1925	$36,344,981
" European loan bonds	11,831,515
" four and one-half per cent bonds, due 1932	50,000,000
" four per cent bonds, due 1934	33,369,000
" refunding bonds, Series A and Series B	72,230,300
" Puget Sound bonds	27,175,000
Total	$230,950,796

Preferred stock

The authorized amount of preferred stock shall consist of 2,000,000 shares of the par value of $100 each. Holders of the preferred stock shall be entitled in any fiscal year of the new company to receive dividends to the amount of five dollars per share, but no more, before any dividends shall be paid in such fiscal year, or declared or set apart for payment in such fiscal year, upon the common stock; but no part of such dividends shall be cumulative whether or not in any fiscal year there shall be net income available for payment of such dividends. After full dividends on the preferred stock to the amount of five dollars per share shall have been paid in any fiscal year, or declared and set apart for payment in such fiscal year, holders of the common stock shall be entitled to receive all further dividends which may be paid in such fiscal year, or declared or set apart for payment in such fiscal year, up to the amount of five dollars per share, but no more, before any further dividends shall be paid in such fiscal year, or declared or set apart for payment in such fiscal year, upon the preferred stock; but no part of such dividends shall be cumulative whether or not in any fiscal year there shall be net income available for payment of such dividends. All dividends in excess of five dollars per share which may be paid in any fiscal year, or declared or set apart for payment in any fiscal year, shall be paid, or declared or set apart for payment, equally in amount per share upon both the preferred stock and the common stock. Dividends on both the preferred stock and the common stock shall be payable only out of the net income or the surplus of the new company as determined by the board of directors and only as and when declared by the board of directors, but may in any fiscal year be paid out of such net income or surplus whether arising during the same fiscal year or accrued during prior fiscal years and may be paid annually, semiannually, or quarterly.

In the event of the dissolution, winding up, or liquidation of the new company, the holders of the preferred stock shall be entitled to receive out of the assets of the new company the par value of their shares before any distribution shall be made to the holders of the common stock but shall not be entitled to share in any assets of the new company thereupon remaining. The foregoing provisions shall not be deemed to require the distribution of assets among the stockholders in the event of a consolidation, merger, lease, or sale which does not in fact result in the liquidation or winding up of the enterprise, if the terms of such consolidation, merger, lease, or sale make other provision for the preferred stock and are consented to by the holders of a majority in amount of each class of stock as hereinafter provided.

The preferred stock and the common stock are to have equal voting power per share and in addition provision is to be made that (a) no change shall be made in the articles of association of the new com-

pany; (b) the new company shall not dispose (by sale, consolidation, merger or lease, or otherwise) of its properties as a whole, or substantially as a whole; (c) no mortgage on its lines of railroad to secure additional indebtedness shall be created (except the first and refunding mortgage, the mortgage securing the fifty-year five per cent mortgage gold bonds, and the adjustment mortgage herein provided for or purchase money mortgages solely upon additional properties hereafter acquired); (d) the authorized amount of preferred stock shall not be increased; and (e) no additional stock ranking either as to dividends or assets on a parity with or in priority over the preferred stock shall be created without, in each such case, the consent of the holders of a majority in amount of the outstanding preferred stock and of the holders of a majority in amount of the outstanding common stock, voting separately. During the existence of the voting trust hereinafter provided for similar consent of holders of like amounts of the respective classes of trust certificates shall also be necessary before the voting trustees may vote the
56 stock held under the trust agreement for any of the foregoing purposes, or in lieu of obtaining the consent of the holders of such trust certificates, the voting trustee may give proxies to the holders of the trust certificates to vote upon any of the foregoing matters in respect of the number of shares represented by their respective trust certificates.

Of the authorized issue of new preferred stock $115,931,900 is to be offered to holders of preferred stock of the railway company deposited under the plan. The remainder of the authorized issue (except such amount as may be issued in connection with the liquidation of the 6% note of the railway company, dated November 1, 1920, held by the United States Government (see Sec. VII), and as may be required to be applied in settlement of claims of general creditors of the railway company), will be reserved for future issue for corporate purposes of the new company.

Common stock

The authorized amount of common stock shall consist of 1,174,113 shares, which shall be without par value or may have such par value as the reorganization managers shall determine.

The entire authorized issue of new common stock is to be offered to holders of common stock of the railway company deposited under the plan.

V

Voting trust

All of the preferred stock and common stock of the new company issued in connection with the reorganization shall be deposited under a trust agreement, in such form and with such terms (which may

include the pledge of the stock as additional security for the adjustment mortgage bonds) as the reorganization managers shall determine, and under which the entire voting power in respect of the stock shall be vested in five voting trustees, to be designated by the reorganization managers. Of the voting trustees named in the trust agreement three shall be persons approved by the bondholders committee, one by the preferred stockholders committee, and one by the common stockholders committee. The trust created by the trust agreement shall continue for such period, not less than five years, as may be determined by the reorganization managers with the approval of said three committees and be specified in the trust agreement. Provision may be made in the trust agreement for extensions of the period thereof with the consent, either in writing or at a meeting, of the holders of a majority in amount of trust certificates of each class. All references in the plan and agreement to the delivery of preferred stock or common stock of the new company shall be understood to mean and include trust certificates in respect of such stock.

VI

Treatment of deposited securities

Depositors of four per cent bonds, due 1925, European loan bonds, four and one-half per cent bonds, due 1932, four per cent bonds, due 1934, Puget Sound bonds, refunding bonds, Series A and Series B, with all coupons maturing after February 1, 1925, will receive on the completion of the reorganization and surrender of their certificates of deposit in negotiable form, together with such certificates as may be required under the Federal or State income tax laws, for each $1,000 principal amount thereof, $1,000 principal amount of new five per cent adjustment mortgage bonds, interest upon which is to be computed from February 1, 1925, and, in cash, the interest accrued upon their deposited bonds at the rate expressed therein to February 1, 1925, but without interest thereon.[1]

57 Depositors of preferred stock of the railway company who shall have made payment of $28 in respect of each share of stock represented by their certificates of deposit at the times and otherwise as hereinafter provided, and depositors of common stock of the railway company who shall have made payment of $32 in respect of each share of stock represented by their certificates of deposit at the times and otherwise as hereinafter provided, will be entitled to receive on the completion of the reorganization and on surrender of their certificates of deposit in negotiable form new securities when issued and ready for delivery at the following rates for each share of preferred stock or common stock, as the case may be, represented by the surrendered certificates of deposit:

[1] February 1, 1925, is the last date upon which interest was paid by the railway company upon any of the bonds to be exchanged under the plan.

For preferred stock: $24 principal amount of now fifty-year five per cent mortgage gold bonds and one share of new preferred stock.

For common stock: $28 principal amount of new fifty-year five per cent mortgage gold bonds and one share of new common stock.

Said sum of $28 in respect of every share of deposited preferred stock shall be payable—

$14 per share on a date fixed therefor by the reorganization managers upon thirty days' notice (given in the manner provided in the annexed agreement) when or after the plan has been declared operative, and notation of such payment will be made on the certificates of deposit, and

$14 per share on, or at the option of the holders of the certificates of deposit at any time before February 15, 1927, with interest at the rate of six per cent per annum from the date fixed for payment of the first instalment to the date of full payment.

Said sum of $32 in respect of every share of deposited common stock shall be payable—

$16 per share on a date fixed therefor by the reorganization managers upon thirty days' notice (given in the manner provided in the annexed agreement) when or after the plan has been declared operative, and notation of such payment will be made on the certificates of deposit, and

$16 per share on, or at the option of the holders of the certificates of deposit at any time before, February 15, 1927, with interest at the rate of six per cent per annum from the date fixed for payment of the first instalment to the date of full payment.

All such payments must be made at the office of the depositary or any sub-depositary for the class of stock represented by the certificates of deposit in respect of which payment is made. Failure by any holder of a certificate of deposit for preferred stock or common stock of the railway company to make payment of the first instalment of the sum to be paid by said holder as above provided on the date fixed by the reorganization managers as hereinbefore provided, or to make full payment of said sum and interest as hereinbefore provided on or before February 15, 1927, will forfeit all rights in respect of the shares of stock represented by his certificate of deposit, all rights in respect of all prior payments under such certificate, and all rights to receive new securities and otherwise under the plan and agreement, and his certificate of deposit shall thereupon become void and of no effect for any purpose.

Any depositor of stock of either class may elect to make full payment of the sum payable by such depositor as above provided upon the date upon which the first instalment shall be payable, and notation of such payment will be made on his certificate of deposit.

Interest on the new fifty-year five per cent mortgage gold bonds deliverable to depositors of stock shall accrue from, or be adjusted as of, the date upon which said first instalment shall be payable.

58

VII

Provision for other obligations and for general creditors

The 6% notes of the railway company held by the United States Government for $25,000,000 and $10,000,000, dated, respectively, March 1, 1922, and December 15, 1922, are to be paid in full in cash.

For the 6% note of the railway company held by the United States Government for $20,000,000, dated November 1, 1920, there is offered to the Government the option to receive either

(a) $17,000,000 cash and $3,000,000 par value of new preferred stock, with full interest on the note to the date of settlement in cash, or

(b) $32,000,000 principal amount of new five per cent adjustment mortgage bonds, interest on which shall be computed from the date to which interest is paid on the note.

Without limitation of the power otherwise to deal with said notes or any of them or of any other powers granted to the reorganization managers under the plan or the annexed agreement, the reorganization managers may, in case offer (b) shall be accepted, purchase for cancellation such principal amount of new adjustment mortgage bonds (or certificates of deposit for existing securities entitled under the plan to receive said bonds) as they may determine not exceeding $32,000,000, and at such prices as they may determine not exceeding on the average the price at which the refunding bonds are now pledged as collateral for said note.

The timber loan, to the extent that it remains unliquidated under the loan agreement upon the completion of the reorganization, may be liquidated by the sale to the holders of the loan of such of the obligations of third parties held as collateral to the loan and at such prices as the reorganization managers in their discretion may determine, and the obligations so taken by the purchasers may be guaranteed by the new company by endorsement or otherwise, or the loan may be dealt with in such other manner as the reorganization managers in their discretion may determine.

In so far as any creditors of and claimants against the railway company other than holders of obligations dealt with herein or hereinbefore mentioned as undisturbed or to be paid or liquidated are not paid by the railway company or by the receivers, such creditors and claimants shall be entitled upon the completion of the reorganization to receive preferred stock in the new company at par for the face amount of their claims, but only in so far as such claims shall have been allowed by one of the District Courts of the United States in which the receivers have been appointed, and only upon assignment of such claims to the National City Bank of New York as depositary for the reorganization managers. Such assignments shall be in form satisfactory to the reorganization managers and shall be made within such period or periods as the reorganization managers may designate by notice given in the manner provided in the annexed agreement.

VIII

Schedule of participation in distribution of new securities by holders of existing securities participating in the plan[1]

Existing securities		Cash adjustment of interest to Feb. 1, 1925		New fifty-year five per cent mortgage gold bonds		New five per cent adjustment mortgage bonds		New preferred stock		New common stock	
Amount	Description	Per $1,000 bond	Total amount	Per cent	Amount	Per cent	Amount	Per cent	Amount	Per cent	Amount
$11,831,515	European loan bonds	$6.66⅔	$78,876.76			100	$11,831,515				
36,344,981	Four per cent bonds, due 1925	6.66⅔	242,299.88			100	36,344,981				
50,000,000	Four and one-half per cent bonds, due 1932	7.50	375,000.00			100	50,000,000				
33,369,000	Four per cent bonds, due 1934	3.33⅓	111,230.00			100	33,369,000				
27,175,000	Puget Sound bonds	3.33⅓	90,583.33			100	27,175,000				
43,089,000	Refunding bonds, Series A	15.00	646,335.00			100	43,089,000				
29,141,300	Refunding bonds, series B					100	29,141,300				
115,931,900	Preferred stock			24	$27,823,656			100	$115,931,900		
117,411,300	Common stock			28	32,875,164					100	1,174,113 shares.

[1] Other than the three 6% notes held by the United States Government.

IX

Comparative table showing capitalization and interest charges

	Present capitalization	Present fixed interest charges	Capitalization giving effect to reorganization plan [1]	Fixed interest charges giving effect to reorganization plan [1]
Undisturbed bonds	$181,370,400	[2] $8,431,904	$181,370,400	[2] $8,431,904
Timber loan to be liquidated	2,200,000	110,000		
Notes held by U. S. Government to be paid, compromised, or settled	55,000,000	3,300,000		
Bonds to be exchanged	230,950,796	9,994,889		
Fifty year five per cent mortgage gold bonds			69,608,520	3,034,941
Adjustment mortgage bonds			230,950,796	
Preferred stock	115,931,900		115,931,900	
Common stock	117,411,300		[4] 117,411,300	
Total	702,864,396	21,836,793	706,363,216	11,466,845

[1] The amounts here stated may be increased by the amount of any securities which may be issued in connection with the liquidation of the 6% note of the railway company dated November 1, 1920, held by the United States Government. (See sec. VII.) These amounts include the new securities issued for new money.

[2] Aggregate of interest for full year at respective rates on principal amount of obligations outstanding June 1, 1925.

[3] This amount will be increased by the amount of preferred stock required to be applied in settlement of general claims against the railway company.

[4] Taking no par value common stock at $100 per share.

60 X

Methods of participation in plan

The holders of securities entitled to participate in the plan may assent thereto and become parties to the annexed agreement by depositing their bonds (in the case of coupon bonds with all coupons maturing after February 1, 1925, attached) or stock, as the case may be, with the proper depositary for such bonds or stock at its office in the city of New York or with one of the subdepositaries for such bonds or stock, on or before July 15, 1925, or such later date as the reorganization managers shall determine.

Bonds registered as to principal must be restored to bearer form before deposit, and registered bonds must be exchanged for coupon bonds or be registered in the name of the depositary for such bonds.

Certificates of stock to be deposited must be duly endorsed in blank for transfer, or accompanied by proper instruments of transfer in blank, in either case duly stamped for transfer at the place of deposit.

The depositaries and subdepositaries shall issue or cause to be issued certificates of deposit, transferable in such manner as the reorganization managers may determine, for all securities deposited hereunder, and every holder of such a certificate of deposit shall be bound by the provisions of this plan and of the annexed agreement.

XI

Provisions for declaring plan operative

The reorganization managers in their absolute discretion may determine whether and when a sufficient amount of the securities of

the various classes shall have been deposited hereunder to render it advisable to declare the plan operative. They may declare the plan operative as to all classes of securities for which provision is made in the plan or only as to certain classes of such securities, and if they declare the plan operative as to specified classes of securities only they may in their discretion thereafter, from time to time, declare the plan operative as to any other class or classes of securities. In case the securities of any class or classes shall be excluded from the reorganization, the deposited securities of such class or classes shall, subject to the provisions in that behalf contained in the annexed agreement, be returned without charge to the holders of the certificates of deposit representing the same, upon due surrender of such certificates to the proper depositary or subdepositary and upon payment of any tax assessed upon the transfer.

In case the reorganization managers shall declare the plan operative as to the deposited securities of any classes as aforesaid, they shall thereupon give notice to that effect in the manner provided in the agreement.

XII

Modification of plan

The reorganization managers may modify the plan or adopt a substitute plan as in the annexed agreement provided in their sole discretion, and any such modification or substitute plan shall bind and conclude the depositors of each class of deposited securities when approved by the committee representing such class: *Provided, however*, That if any of the three committees shall disapprove, or shall fail to approve, the proposed modification or substitute plan, or if in the judgment of the reorganization managers the proposed modification or substitute plan shall adversely affect to a material degree the interests of any class of depositors, or if in the judgment of any of the three committees the proposed modification or substitute plan shall adversely affect to a material degree the interest of any of the class of depositors represented by such committee, the reorganization managers shall file with the depositaries a statement of the modification or of the substitute plan, as the case may be, and shall give, in the manner provided in the agreement, notice of the fact of such filing, specifying the class or classes of securities the committee representing which shall have disapproved, or failed to approve, such modification or substitute plan, or which are so deemed adversely to be affected as aforesaid by the proposed modification or substitute plan. Within thirty days after the first publication of such notice the holders of certificates of deposit for the securi-
61 ties specified in such notice, may withdraw from deposit hereunder the securities represented by such certificates of deposit, or their proceeds, in the manner and upon the conditions specified in the agreement, which limits the aggregate amount which withdrawing depositors may be required to pay toward the compensation and expenses of the reorganization managers and of the committees

to one per cent of the face amount of the securities withdrawn. All depositors of such securities who do not so withdraw the securities represented by their respective certificates of deposit shall be deemed to have assented to, and shall be bound by, such modified or substitute plan.

XIII

Reorganization managers, syndicates, etc.

The reorganization managers in their discretion may form or cause to be formed one or more syndicates to underwrite the cash requirements of this plan, or of any modified or substitute plan, or the participation therein of any class or classes of security holders, or to provide the cash required to make any purchase of existing securities which the reorganization managers may deem advisable or to provide the cash payable to any holders of securities upon any sale of mortgaged or pledged property, or for any other purpose deemed advisable or for any or all of such purposes and may, with the approval of the bondholders committee, the preferred stockholders committee, and the common stockholders committee, fix the compensation of any such syndicate, including the compensation of the managers thereof. The reorganization managers and the members of any of the committees and the depositaries and subdepositaries may be managers of any such syndicate, may be participants therein, and may participate in any compensation, commission, profit, or other benefit accruing to such syndicate or in connection with the formation or management thereof. The reorganization managers may, in their unrestricted discretion as provided in the annexed agreement, fix the compensation of the committees, the depositaries and subdepositaries, and of all others entitled to compensation in the reorganization, other than syndicates as hereinbefore provided and other than their own compensation as reorganization managers. As compensation for their services as reorganization managers the reorganization managers shall be entitled to receive one-fourth of one per cent upon the $230,950,796 principal amount of outstanding bonds exchangeable for new securities under the plan and twenty cents per share upon the 2,333,432 shares of outstanding stock of the railway company, unless the plan shall be abandoned, in which event they have agreed to serve without compensation for such services. The bondholders committee, the preferred stockholders committee, and the common stockholders committee have also agreed that if the plan shall be abandoned they will serve without compensation.

XIV

Statements contained in plan

The statements contained in this plan and in the introductory statement have been compiled from sources believed to be reliable. Certain of them are necessarily approximate and none are to be considered as representations.

No estimate, statement, explanation, or suggestion contained in the plan or the annexed agreement or in any circular issued or which may hereafter be issued by any committee representing, in whole or in part, any issue of bonds or stock dealt with in the reorganization or representing holders thereof, or by the reorganization managers, or by any of the depositaries or subdepositaries, or by any one else, is intended or is to be accepted as a warranty or representation or as a condition of deposit or assent under the plan or agreement, and, except by written consent of the reorganization managers, no defect or error shall release any depositor under the plan and agreement or affect or release any assent thereto or affect or release any payment made or action taken pursuant thereto. In order to carry out and give effect to this plan, the annexed agreement has been executed by the reorganization managers and by each of the committees, and a copy thereof will be lodged with each depository. The provisions of the agreement shall govern in case of conflict between the plan and the agreement.

Reference is hereby made to the statement preceding this plan defining the meaning of various terms when used in this plan and in the agreement and in the introductory statement thereto.

Dated, New York, June 1, 1925.

62 COVERDALE & COLPITTS, CONSULTING ENGINEERS.
66 Broadway, New York, June 1, 1925.

MESSRS. KUHN, LOEB & CO., AND THE NATIONAL CITY COMPANY,
Reorganization managers under the plan and agreement dated June 1, 1925, for the reorganization of Chicago, Milwaukee and St. Paul Railway Company, New York City.

DEAR SIRS: At the request of the board of directors of Chicago, Milwaukee and St. Paul Railway Company we undertook, beginning in January of this year, a thorough investigation of the condition of the railway company's property, its capital requirements, and its earning possibilities, with a view to advising the board with respect to the problem presented by the maturity on June 1 of this year of approximately $48,000,000 of bonds. Our conclusion was that even if the maturing bonds could be taken care of the financial problems of the company would not be met, and that a readjustment of the financial structure was necessary. Since the receivership we have continued our study in order to be in a position to advise in connection with such a readjustment.

For the purpose of presenting a view of the financial position of the system as a whole we have readjusted the income accounts for 1923 and 1924 to give effect to what we regard as more nearly adequate rates of depreciation of equipment, to include as joint facility rents, advances made to the Chicago Union Station for the purpose of paying bond interest under the agreement by which the railway company enjoys the use of the station, and to treat the interest on the obligations of the Chicago, Terre Haute & Southeastern Rail-

way Company (whose properties are operated under lease) as an interest obligation of the system. Upon such a readjustment there would be shown as available for interest in 1923, $18,816,000 against interest charges of $20,950,000, or a deficit of $2,134,000, and as available for interest in 1924, $17,529,000 against interest charges of $21,751,000, or a deficit of $4,252,000.

We believe that the electrification of portions of the mountain lines has been justified by the resulting operating economies and recommends the electrification of additional sections in order to secure the full benefits of the work already done. Rail renewals for a number of years have been inadequate and some of the lines are somewhat deficient in ballast. In addition certain of the shop machinery and power stations on the eastern lines are to some extent obsolete, a considerable number of coaling stations should be replaced with mechanical plants, and additional water-treating plants should be provided. For the foregoing and other capital expenditures necessary to the normal anticipated development of the system we believe that there should be adopted a program of additions and betterments to road for the next ten years, as follows: 1925, $4,690,000; 1926, $7,775,000; 1927, $8,325,000; 1928, $5,850,000; 1929, $5,100,000; 1930, $10,000,000; 1931, $9,600,000; 1932, $6,600,000; 1933, $7,100,000; 1934, $7,600,000, or an average of $7,294,000 per year.

The equipment of the system is only in fair condition, a large number of units should be rebuilt, and additional cars should be purchased to overcome the deficiency in ownership, to replace
63 retirements, and to meet the estimated increase in traffic. In this connection it should be noted that in recent years an extensive rehabilitation plan has been conducted, as a result of which the freight equipment is in much better condition than formerly. This should be continued. Reserves for depreciation of equipment have been inadequate and we deem it advisable that the rates for such depreciation be increased and allowance therefor be made in all estimates of future earnings. In our judgment there should be adopted a program for new equipment and for additions and betterments to existing equipment for the next ten years, as follows: 1925, $14,667,000; 1926, $2,100,000; 1927, $15,600,000; 1928, $11,100,000; 1929, $11,100,000; 1930, $11,100,000; 1931, $9,300,000; 1932, $9,300,000; 1933, $9,300,000; 1934, $9,300,000, or an average of $10,286,000 per year.

While this program contemplates total new capital expenditures averaging $17,580,000 per year for ten years, the new equipment can doubtless be financed under equipment trusts for 75 per cent of cost, leaving to be otherwise provided for—

Cash and deferred payments on new equipment trusts	$4,165,000
Deferred payments on existing equipment trusts	2,662,000
Additions and betterments to equipment	1,700,000
Average per year for equipment	8,527,000
Additions and betterments to road	7,294,000
Average per year for road and equipment	15,821,000

The depreciation fund will, we estimate, provide for an annual average of $7,590,000 of capital expenditures, so that about $8,231,000 of the total annual expenditures contemplated by the program will be required to be financed by appropriations from surplus income or by the issue of new securities other than equipment obligations.

We recommend that additional working capital of $5,000,000 be provided to relieve the present deficiency of current assets over current liabilities.

In explanation of this recommendation it may be stated that as of December 31, 1924, the current assets of the company were $44,931,343, but these assets included $13,883,801 of notes and shares of the Milwaukee Land Company, which are not susceptible of quick realization, and materials and supplies amounting to $13,575,288, a large part of which will eventually be used for improvements chargeable to capital account, and the balance must be maintained for the continued efficient operation of the property.

The current liabilities as of that date amounted to $33,502,293, from which, however, may be deducted the timber loan of $2,340,000, which is to be otherwise liquidated under the plan.

The available current assets as of December 31, 1924, were, therefore, $17,472,254, against current liabilities of $31,162,293.

We have carefully studied the plan of reorganization which has been prepared by you. In our opinion, in the light of the knowledge which we have acquired of the whole situation, it adequately meets the financial problems of the St. Paul system.

It is apparent that the first requisite of any plan of reorganization must be to provide a means for financing these necessary capital expenditures and to bring the fixed interest charges well within the prospective earnings. These ends the plan accomplishes through the present raising of new money through making available to the new company a large amount of general mortgage bonds, through the creation of the new first and refunding mortgage and through the conversion of the present fixed interest obligations secured under the general and refunding mortgage and the Puget Sound mortgage into obligations upon which the payment of the interest is dependent upon income.

We have estimated that if the program which we recommend is pursued the amount of earnings available for interest, based upon normal business conditions (as an average over a period of years)
64 will be $17,650,000 in 1925, $30,150,000 in 1930, and $39,100,000 in 1934. Assuming that an average of only $2,500,000 per annum is appropriated from surplus income for capital expenditures, the fixed charges of the new company under the plan, exclusive of interest on the new adjustment mortgage bonds (figuring cost of new money at 5½ per cent per annum), would be for 1925 (including for that year interest on the Government loans), $12,200,000, for 1930, $14,415,000, and for 1934, $15,792,000. Should the estimated earnings be realized the amount of the available net income (as defined in the plan) for interest on the new adjustment mortgage bonds would be $15,013,000

in 1931, $16,962,000 in 1932, $18,894,000 in 1933, and $20,808,000 in 1934.

Our study of the various underlying bond issues and the properties by which they are secured has convinced us that the value of such security, or, in the case of one or two of the smaller issues, the serious consequences which would flow from any other course, justifies leaving undisturbed the issues which are so treated by the plan. We also believe that the lease of the Chicago, Terre Haute & Southeastern Railway Company property and the ownership of the Chicago, Milwaukee & Gary Railway Company will be of such value to the new company that it should continue the present relation of the railway company to those properties and their securities. The relative values of the security for the Puget Sound bonds and for the bonds secured under the general and refunding mortgage we believe justifies treating the two issues on the same basis and every practical consideration makes it advisable that both these classes of bonds be given new securities under a single mortgage rather than that separate mortgages be made upon the separate parts of the system.

Yours very truly,

COVERDALE & COLPITTS.

65 REORGANIZATION AGREEMENT

Agreement dated June 1, 1925, between

Kuhn, Loeb & Co., a copartnership, and the National City Company, a corporation of the State of New York (hereinafter together called the reorganization managers), parties of the first part;

Frederick H. Ecker, Bertram Cutler, Edward D. Duffield, Samuel H. Fisher, Jerome J. Hanauer, William E. Knox, Charles E. Mitchell, Charles A. Peabody, and H. F. Whitcomb constituted as a committee (hereinafter called the bondholders committee), to represent holders of the following bonds of the railway company, viz: Four per cent bonds, due 1925; European loan bonds; four and one-half per cent bonds, due 1932; four per cent bonds, due 1934; Puget Sound bonds; and refunding bonds, Series A and Series B; Mortimer N. Buckner, Arthur W. Loasby, Oliver C. Fuller, John McHugh, and Harold I. Pratt constituted as a committee (hereinafter called the preferred stockholders committee), to represent holders of preferred stock of the railway company; and Donald G. Geddes, George W. Davison, Bayard Dominick, Stanley Field, Walter L. Johnson, and Percy A. Rockefeller constituted as a committee (hereinafter called the common stockholders committee), to represent holders of common stock of the railway company, parties of the second part; and

Holders of the bonds and preferred stock and common stock above mentioned who shall become parties hereto in the manner hereinafter provided, their successors and assigns (hereinafter called depositors), parties of the third part.

The foregoing plan of reorganization (hereinafter called the plan), together with this agreement, has been promulgated by the reorgani-

zation managers and has been adopted and approved by the three committees, and the three committees and the depositors desire that the plan be carried into effect by the reorganization managers in their discretion. Reference is hereby made to the statement preceding the plan defining the meaning of various terms when used in the plan and in this agreement.

Therefore, in consideration of the premises, and of the mutual benefits to be derived from union of interests and concert of action, and of the conditions and promises herein contained, and for other valuable considerations, it is agreed by the parties, and each depositor has agreed and hereby does agree with each of the other depositors and with the three committees and the reorganization managers as follows:

First. The depositors jointly and severally hereby assent to and accept all the provisions of the plan, and the same is hereby approved and adopted and is and shall be taken to be a part of this agreement with the same effect as if every provision thereof had been embodied herein, and the plan and this agreement shall be read as parts of one and the same instrument and every depositor assenting to either shall be bound by both. The provisions of this agreement shall govern in case of conflict between the plan and this agreement.

A copy of this agreement shall be lodged with each of the depositaries hereinafter mentioned. This agreement shall be deemed to be, and shall be construed as, a contract governed by the laws of the State of New York.

Second. The following bonds and stock of the railway company may be deposited under the plan and this agreement on the terms stated herein and in the plan: Four per cent bonds, due 1925; European loan bonds; four and one-half per cent bonds, due 1932; four per cent bonds, due 1934; Puget Sound Bonds; refunding bonds, Series A and Series B; preferred stock; common stock.

66 Third. United States Mortgage and Trust Company shall be the depositary for the four per cent bonds, due 1925, and for the European loan bonds. Bankers Trust Company shall be the depositary for the four and one-half per cent bonds, due 1932. The Farmers' Loan and Trust Company shall be the depositary for the four per cent bonds, due 1934. United States Trust Company of New York shall be the depositary for the Puget Sound bonds. Guaranty Trust Company of New York shall be the depositary for the general and refunding bonds, Series A and Series B. The New York Trust Company shall be the depositary for the preferred stock of the railway company. Central Union Trust Company of New York shall be the depositary for the common stock of the railway company. The Equitable Trust Company of New York shall be the depositary for the European loan bonds in Paris, France, and London, England. The sub-depositaries named in the plan shall be the sub-depositaries for the above mentioned bonds and preferred stock and common stock of the railway company, respectively, as

provided in the plan. The reorganization managers may appoint additional depositaries for any of said securities, and any of the depositaries may, with the approval of the reorganization managers, also appoint additional sub-depositaries or agents.

Holders of the above mentioned bonds may become entitled to the benefits of the plan and this agreement by depositing their said bonds (in case of coupon bonds, with all coupons maturing after February 1, 1925, attached as provided in the plan) with the proper depositary or with one of the sub-depositaries for such bonds, on or before July 15, 1925, or such later date as the reorganization managers may from time to time determine as hereinafter provided. Bonds registered as to principal must be restored to bearer form before deposit, and registered bonds must be exchanged for coupon bonds or registered in the name of the depositary for such bonds.

Holders of the preferred stock and of the common stock of the railway company may become entitled to the benefits of the plan and this agreement by depositing the certificates representing their shares with the proper depositary or with one of the sub-depositaries for such stock on or before July 15, 1925, or such later date as the reorganization managers may from time to time determine as hereinafter provided and by making the payments called for by the plan. Certificates of stock to be deposited must be duly endorsed in blank for transfer or accompanied by proper instruments of transfer in blank, in either case duly stamped for transfer at the place of deposit.

Depositors of said bonds and stock shall by the delivery thereof to the respective depositaries or sub-depositaries be deemed to have deposited such securities under the plan and this agreement, and shall receive therefor certificates of deposit, issued by such depositaries or sub-depositaries and in such forms as may be prescribed by the reorganization managers, specifying the securities deposited. The depositors respectively agree at any time and from time to time on demand of the respective committee representing such securities or the reorganization managers, as the case may be, to execute and deliver any and all other transfers, assignments, authorizations, powers, or writings required more fully to evidence the vesting of the ownership of the securities represented by the certificates of deposit or otherwise subject hereto in such committee or the reorganization managers, as the case may be, or their respective nominees. The depositors of bonds also agree at any time and from time to time on demand of the respective committee representing such bonds or the reorganization managers, as the case may be, to execute and deliver any and all certificates which may be required by the income tax laws of the United States or of any State, or by the regulations of the Treasury Department, or of any other governmental department or officer having authority, for the collection of coupons and interest on the deposited bonds or any of them or for any other purpose.

Holders and recipients from time to time of certificates of deposit for securities so deposited shall be irrevocably bound and concluded by the plan and this agreement and the terms thereof, and be conclusively and finally deemed for all purposes to have assented to the same and to have conferred the powers in the plan and in this agreement mentioned upon the three committees and the reorganization managers, respectively; and the rights of all holders from time to time of certificates of deposit issued under this agreement shall be such only as are conferred by the plan and this agreement upon the holders of the securities of the character represented by such certificates of deposit respectively and shall be subject to compliance with such terms as the plan and this agreement may impose as conditions of participation in the benefits hereof. By accepting or holding any certificate of deposit issued by any depositary or subdepositary or transferred as hereinafter provided every recipient or holder thereof shall thereby become a party to the plan and to this agreement with the same force and effect as if he had actually executed the same.

67 Holders of certificates of deposit issued hereunder in respect of said bonds, on compliance with all the terms and conditions of the plan and this agreement and of their certificates of deposit, and on surrender of their certificates of deposit in negotiable form, will be entitled to receive upon the completion of the reorganization the new securities (but only as and when issued and ready for delivery under the plan) to which they shall respectively be entitled pursuant to the terms and provisions of the plan and this agreement.

Holders of certificates of deposit issued hereunder in respect of preferred stock of the railway company who shall have made payment of $28 and interest in respect of each share of preferred stock represented by their certificates of deposit and holders of certificates of deposit issued hereunder in respect of common stock of the railway company who shall have made payment of $32 and interests in respect of each share of common stock represented by their certificates of deposit at the times and otherwise as in the plan and this agreement provided, and on compliance with all other terms and conditions of the plan and this agreement and of their certificates of deposit, will be entitled to receive upon the completion of the reorganization and on surrender of their certificates of deposit in negotiable form, the new securities (but only as and when issued and ready for delivery under the plan) to which they shall respectively be entitled pursuant to the terms and provisions of the plan and this agreement.

If and when the plan shall have been declared operative as to the preferred stock or common stock of the railway company, or both, as hereinafter provided, notice shall be given by the reorganization managers, in the manner provided in article thirteenth hereof, to the depositors of such stock of the date fixed by the reorganization managers (which shall not be less than thirty days after the date of

the first publication of said notice) on or before which the first installment of the sum to be paid by such depositors as provided in the plan shall be payable. The certificates of deposit in respect of which any payment is made shall be presented by the holders thereof at the time of such payment for notation of such payment upon such certificates by the depositary or subdepositary to which the payment is made.

All holders of certificates of deposit for preferred stock or common stock of the railway company severally and respectively agree, for themselves and their respective transferees and assigns, that failure by any holder of a certificate of deposit for preferred stock or common stock of the railway company to make payment of the first instalment of the sum to be paid by such holder as provided in the plan on the date so fixed by the reorganization managers for such payment or to make full payment of said sum and interest as in the plan provided on or before February 15, 1927, will forfeit all rights in respect of the shares of stock represented by his certificate of deposit, all rights in respect of all prior payments under such certificate and all rights to receive new securities and otherwise under the plan and this agreement and that such certificate of deposit shall thereupon become void and of no effect for any purpose. All holders of certificates of deposit for preferred stock or common stock of the railway company severally and respectively agree, for themselves and their respective transferees and assigns, that prompt payment of the sum called for by the plan and this agreement is an essential condition precedent to the delivery to them of the bonds and stocks to which they are respectively entitled under the plan and that any holder of such a certificate of deposit who shall fail to make prompt payment of said sum or any instalment thereof, payable as provided in the plan and this agreement, on or before the date fixed for such payment as provided in the plan and this agreement or by any enlargements or extensions of time permitted by the reorganization managers, shall forthwith and without further or other notice or action cease to have any right to acquire the bonds and shares of stock of the new company, which, pursuant to the provisions of the plan and this agreement, such holder might have acquired, and shall cease to have any rights in the shares of stock of the railway company deposited and represented by his certificate of deposit, or their proceeds, or under such certificate of deposit and shall cease to be entitled to any rights or benefits under the plan or under this agreement, and no such holder nor his successors in interest shall be entitled to the return of the shares of stock of the railway company deposited or to the repayment of any money theretofore paid hereunder in respect of said shares, or to have any further interest or right in or in respect thereof or under this agreement, and such shares of stock shall be forfeited and pass to, and the ownership thereof shall vest in, the reorganization managers, their successors or assigns, or in such person, association, firm, corporation, or syndi-

cate as the reorganization managers in their discretion may determine, and the reorganization managers may use and transfer said shares for any purpose deemed by them useful or appropriate for carrying out the plan and this agreement, and any money paid in respect of said shares as above provided prior to the date of any such default shall belong to and be applied for the account of the reorganization managers for the purpose of the plan. For payments made in respect of said shares of stock by the reorganization managers or such other person, association, firm, corporation, or syndicate, the new securities issuable in respect of said shares of stock pursuant to the plan may be issued to the reorganization managers or such other person, association, firm, corporation, or syndicate
68 as in the case of payments made by depositing stockholders.

The reorganization managers, however, in their absolute and uncontrolled discretion, may in general or in particular instances and on such general or special terms and conditions as they may see fit from time to time enlarge or extend the time for making any payments required by the plan and this agreement, may waive any such default and any forfeiture in respect thereof, and may accept payment of sums from any depositor at any time overdue and with or without the imposition of such terms and conditions as they may prescribe.

All holders of certificates of deposit for preferred stock or common stock of the railway company severally and respectively agree, for themselves and their respective transferees and assigns, that out of the cash payments of $28 per share of preferred stock and $32 per share of common stock made by them $1.50 per share may be used by the reorganization managers in their absolute and uncontrolled discretion, whether before or after the plan has been abandoned, to pay the fees and disbursements of the counsel of the reorganization managers and the committees and the fees and disbursements of all depositaries and subdepositaries and, if the plan shall not be abandoned, to pay the compensation of the reorganization managers and the committees. Nothing herein contained shall be deemed to require the reorganization managers to segregate said moneys or to limit the right of the reorganization managers to apply to the payment of any other reorganization expenses any other moneys or securities coming into their control or the right to require payments by withdrawing depositors of their pro rata share of such compensation, fees, and disbursements or any other right or power conferred on the reorganization managers by the plan or this agreement.

The certificates of deposit issued hereunder and the interests represented thereby and all rights by virtue thereof shall be transferable only subject to the terms and conditions of the plan and this agreement and in such manner and on such conditions as the reorganization managers shall determine. Upon any such transfer all rights of the transferor under the plan and this agreement and in

respect of the deposited securities represented by the certificate of deposit transferred, and in respect of any and all sums of money paid in respect of such securities, and all rights under such certificate of deposit, shall be and become vested in and shall pass to the transferee, and all rights of the transferor under such certificate of deposit or otherwise in respect of such securities or moneys or under the plan and this agreement shall forthwith cease and determine and such transferee shall, for all purposes, be substituted in place of the transferor, subject to this agreement. All such transferees, as well as the original holders of certificates of deposit issued hereunder, shall be embraced by the term depositor whenever used herein or in the plan.

The certificates of deposit may be treated by the reorganization managers, the committees, the depositaries, and the subdepositaries as negotiable instruments, and the holders for the time being, or, if registered, the registered holders for the time being, may be deemed to be the absolute owners thereof and of all rights of the original holders of said certificates of deposit, and the reorganization managers, the three committees, the depositaries, the subdepositaries, or any of them shall not be affected by any notice to the contrary.

Holders of securities who do not become parties hereto in the manner herein provided, and within the periods limited or fixed therefor, will not be entitled to deposit their securities or become parties to this agreement or to share in the benefits of the plan or of this agreement, and shall acquire no rights hereunder, except upon obtaining an express written consent of the reorganization managers, and the reorganization managers are hereby authorized and empowered, in their absolute discretion and in general or in particular instances, from time to time, and upon such general or special terms and conditions as they may see fit, to withhold or give such consent and to enlarge or extend the time for making any deposits of any class of securities under the plan and this agreement and to admit as parties to, and to participation in, the plan and this agreement, as depositors hereunder, the holders of any of the securities mentioned in article second hereof or of certificates of deposit in respect thereof, or the holders of any other securities that may be dealt with or affected by the plan or any modification thereof or substitute plan, and to enter into agreements to that effect and for that purpose or otherwise with any committee representing securities of any class, in such manner and upon such terms and conditions as the reorganization managers shall fix and determine, and in like manner to permit the holders of such securities to become parties hereto, without the actual deposit of securities; and all security holders so becoming parties shall be embraced within the term depositors whenever used in this agreement. The reorganization managers in like manner and with like effect may, upon such terms and conditions as they may determine, authorize the deposit hereunder of bonds without such interest coupons appertaining thereto as they may specify, or

certificates of deposit in respect thereof, and also may authorize the deposit hereunder of such interest coupons without the bonds to which they appertain. No rights hereunder shall accrue in respect of any securities mentioned herein unless nor until the same shall have been subjected to the plan and this agreement as herein provided.

69 The term deposited securities, whenever used in this agreement, shall, unless the context otherwise requires, include all securities directly deposited hereunder or in any manner herein provided subjected hereto, or represented by a certificate of deposit, the holder of which shall, in any manner herein provided, have assented to the plan and this agreement or be subjected to the plan and this agreement. The term certificates of deposit whenever used in this agreement shall, unless the context otherwise requires, include certificates of deposit issued under the plan and this agreement or in any manner becoming subject to the plan and this agreement.

The term depositor or the designation holder of a certificate of deposit or certificate holder or similar designation, whenever used herein, is intended and shall be construed to include individuals, partnerships, associations, joint stock companies, and corporations, whether acting in their own right or as trustees, guardians, committees, agents, or in any other representative or fiduciary character, and those represented by or claiming under them.

The reorganization managers may cause to be listed upon the New York Stock Exchange or elsewhere any or all of the certificates of deposit and any or all of the new securities the creation or issue of which is contemplated by the plan.

Fourth. Each of the three committees is hereby vested under the terms of this agreement, as trustee of an express trust, with the legal title to all securities of the class or classes represented by it as aforesaid which may be deposited hereunder or subjected hereto and the respective depositors of such securities hereby assign and transfer the same to the committeee representing such securities.

Every depositor in any manner assenting to the plan and this agreement does by such assent for himself, and not for any other depositor, sell, assign, transfer, and set over to the committee representing such securities, and to its successors and assigns, each and every bond or share of stock or other security or certificate of deposit therefor, deposited hereunder or subjected hereto, and every depositor hereby agrees that such committee representing such securities is vested with legal title to, and all the rights, power, and authority of absolute owner of, all such bonds, shares of stock or other securities, or certificates of deposit therefor, deposited hereunder or subjected hereto, and of all other securities, obligations, and property of every nature whatsoever which may be acquired by such committee pursuant to the provisions of the plan or of this agreement and is entitled at any time and from time to time, subject to the provisions of article fifth hereof, unrestrictedly to exercise and may exercise all such rights,

power, and authority in respect of all such securities. Without prejudice to the general power and authority herein granted, each of the three committees, in respect of the securities represented by it, shall, subject to the provisions of article fifth hereof, have the following powers:

To take or institute or cause to be taken or instituted such actions or proceedings, legal or otherwise, give such directions, execute such papers, and do or cause to be done such acts as such committee may consider judicious to enforce any security for, or procure the payment of, any deposited securities represented by it or otherwise to protect the rights and interests of the depositors so represented, or for any of the purposes of this agreement; to procure or consent to any corporate action by the railway company or any other corporation subsidiary to or affiliated with the railway company, or in which the railway company may be interested; to sign and file any written consent or instrument required or permitted by law to be signed and filed; to demand, receive and collect all amounts that may be due and owing on or payable in respect of any such deposited securities, and whether for interest, principal, dividends, or otherwise; to elect, or request and cause any trustee or trustees under any mortgage or trust indenture securing the payment of any bonds deposited hereunder and represented by such committee to elect, to have the principal of any bonds or other obligations become due and payable, and at pleasure to revoke or withdraw such election or cause the same to be revoked or withdrawn; to request, direct or instruct any trustee or trustees of any such mortgage or trust indenture to prosecute foreclosure or to take other proceedings for the enforcement thereof or otherwise, or for the enforcement of any such bonds, or to exercise the powers or any of them, conferred by such mortgage or trust indenture or any indenture supplemental thereto, and to confirm and give to such trustee or trustees all such powers as in the judgment of such committee may be necessary or advantageous in carrying out the plan; to make all such other requests, directions, instructions, or demands upon any such trustee or trustees or otherwise as such committee may deem proper; to exercise all such rights and make all such requests, directions, instructions, or demands in respect of any securities pledged to secure any of the deposited securities or in respect of any mortgage or trust indenture securing such pledged securities; to remove any trustee under any mortgage securing any of the deposited securities or securing any of the securities pledged to secure any of the deposited securities or to appoint a new trustee to succeed any trustee so removed or resigning or otherwise disabled from acting; to terminate or seek to dissolve or modify any trust or lease, in whole or in part, and to apply for the determination of the validity thereof, or for the removal of any trustees or the
70 substitution of other trustees, or to take any other steps in respect of any trust or lease or under any provision thereof; to call or waive notice of, and to attend, any meeting or meetings of bondholders, creditors or stockholders, however convened, and either

in person or by proxy to exercise any power to vote in respect of such securities or any of them at all meetings for anything whatsoever authorized by, or deemed by such committee necessary or helpful to effectuate or carry out, the plan and this agreement or any modification thereof or substitute plan, including, but without limiting the generality of the foregoing, the power to vote and consent in writing or otherwise to authorize the creation and issue of any and all stocks, bonds, debentures, and other securities, the creation and execution of any and all mortgages, trust agreements, or other instruments, the increase or reduction of the capital stock of the railway company or of the par value of the shares of the capital stock of the railway company or any thereof in such manner and in such amounts as the reorganization managers may determine, the reorganization of the railway company under the provisions of any present or future law providing for the reorganization of corporations so as to permit the issue of shares without nominal or par value, the merger or consolidation of the railway company with any other corporation or corporations whether now organized or to be organized for the purpose of carrying out the plan, and the sale or lease of the railroads and assets of the railway company, or such part or parts thereof as such committee in its discretion may determine, to such other corporation or corporations organized or to be organized under the laws of such State or States as such committee may determine and for such consideration, whether in stocks or securities or otherwise, as such committee may determine; to do whatever may be deemed by such committee advisable to permit or procure the sale or lease as an entirety, or the separate sales or leases, of the railroads or other property of the railway company wherever situated; to wind up and dissolve the railway company; generally to vote and consent in respect of the bonds or stock represented by it for any corporate action whatsoever deemed by such committee necessary or helpful to carry out the plan and this agreement; to transfer the deposited securities represented by it to such other corporation as may be used to carry out the plan in exchange in whole or in part for the stocks or other securities of such other corporation; to possess and exercise each and every right, power, and privilege conferred upon the holders of any deposited bonds represented by it under the mortgage or trust indenture securing the same or any indenture supplemental thereto; to compromise or settle any suit, action or legal proceeding now pending or hereafter commenced or threatened, in any wise affecting the deposited securities, or any of them, or the property of the railway company or any corporation subsidiary to or affiliated with the railway company or in which the railway company may be interested; to discontinue or cause or consent to the discontinuance of any actions or legal proceedings whether instituted by such committee or others; to enter into any agreement or arrangement for decrees or orders for facilitating or hastening the course of litigation, or tending towards, or deemed by such committee in its discretion likely to promote, the

consummation of the plan; to become parties to, or exercise control over, all proceedings, legal or otherwise, now pending or hereafter instituted in which the depositors or holders of securities of any class or classes represented by it are or may be interested, including the right to apply for or consent to the appointment of any receiver or receivers or to apply for or consent to the removal of any receiver or receives and the substitution of one or more other receivers, or the termination of any receivership and the delivery of property to its owners; to consent to the issue and sale of receivers' certificates or other obligations, and to the securing of any receivers' certificates so issued by liens or charges upon any or all of the property and income of the railway company or of any other corporation, whether or not subject to any mortgage or mortgages or trust indenture or trust indentures securing the payment of any deposited bonds or of any bonds pledged to secure any of the deposited bonds, and whether or not prior to the lien thereof; to transfer deposited securities or other property, or cause the same to be transferred, into the names of such committee, or of its nominees; to sell, assign, transfer, and deliver all or any of the deposited securities represented by it, and to enter into any such contract or contracts with any person, firm, or corporation, as such committee shall deem proper for the purposes of the plan and this agreement; to execute bonds or agreements of indemnity or other bonds on behalf of the deposited securities represented by it and to charge such securities, or any property acquired by such committee or the new securities, therewith; to enter into agreements for the acquisition of and to acquire on such terms as they may see fit any lines of railroad or other property of any kind or nature whatsoever in the judgment of such committee advantageous to the new company or for any of the purposes of the plan and this agreement; to make payment therefor or in respect thereof or to pay or discharge any such securities, claims, or obligations, or any receivers' certificates or obligations or liabilities and for such purpose to use any money coming into its hands; to enter into agreements with the holders, or any committee representing the holders, of any securities, obligations, indebtedness, or claims for the deposit thereof under the plan and this agreement or under any other plan and agreement approved for the purpose, and to arrange for the payment in whole or in part of the compensation or expenses
71 of any such committee; to have and exercise such powers in respect to all securities, obligations, indebtedness, and claims so subjected to the plan as it is authorized to exercise in respect to the deposited securities or as it may be authorized to exercise in any agreement under which such securities shall have been made subject to the plan; to pay or discharge any taxes, fees or governmental charges necessary or proper or expedient for or in connection with the deposit, assignment, or transfer hereunder, or in pursuance hereof, of any securities represented by it from time to time and upon

such terms and conditions as the committee may determine; or any taxes, fees, or charges imposed by any public authority wherever situated, domestic or foreign, in respect of the authorization, creation, issue, or distribution of all or any of the new securities or otherwise in connection with carrying out the plan or this agreement; from time to time, on such terms and conditions as it may determine, to advance, borrow, procure the advance of, or by guaranty or by the sale or pledge of any new securities to be created, or otherwise, to obtain, money for any of the purposes of the plan or this agreement, including such sums as the committee may deem it expedient to provide for the new company, or to expend in the purchase of properties to be acquired for the purposes of the plan; to charge or pledge any deposited securities, any property acquired by the committee pursuant to the provisions of the plan or of this agreement or any new securities to be issued, for the repayment of any moneys prior to the date of this agreement or hereafter advanced, borrowed, procured to be advanced, or otherwise obtained or of any indebtedness or liability incurred; in case of any such advance or borrowing, whether upon pledge or not, to give to the lender the promissory note or notes of such committee (signed on behalf of any such committee by its chairman or otherwise as may be authorized by such committee), for the sums advanced, borrowed, procured to be advanced, or otherwise obtained; to direct in writing the depository or subdepository for any securities represented by such committee to hold the securities deposited with it and any other property, or any designated part thereof, as security for the repayment of any moneys so advanced or borrowed, in which case such securities and other property shall be, and shall be held by such depository or any subdepository as, security for the repayment of the moneys so advanced or borrowed with the same effect (except as may be otherwise provided in such direction) as if they were actually deposited with the person lending such moneys or making such advances as security for the repayment thereof; and generally, in the exercise of the powers of such committee under any of the provisions hereof, to use and do everything in respect of such securities, and to use any funds or property at any time subject to its control, and, in respect of any property or securities purchased or acquired as above provided, to exercise all rights of ownership, including voting rights, as fully and to the same extent as the owner or holder thereof; to do whatever in the judgment of such committee may be expedient to promote or procure the sale as an entirety of the property and franchises of the railway company and of any corporation subsidiary to or affiliated with the railway company or in which the railway company may be increased, or separate sales of portions of such property and franchises; to adjourn or procure or consent to the adjournment of any sale of any property or franchise, or any portion or parcel thereof in its discretion; to bid or refrain from bidding or to cause any one else to bid, at any sale, either public or private, either in separate parcels or

as a whole, for any property or franchises, or any part thereof, whether or not owned, controlled, or covered by or held directly or indirectly as security or in trust for the benefit of the deposited securities, or any of them, including or excluding any particular line of railway, rolling stock or other property, real or personal, and, before or after any sale, to arrange and agree for the resale of all or any portion of the property or franchises which such committee may desire to sell rather than retain; to elect not to take any portion of any property purchased at any sale; to hold any property or franchises purchased by or for it, in its name or in the name or names of any person or persons, firm or firms, corporation or corporations approved by it, for the purposes of the plan and of this agreement, and to apply or cause to be applied any or all the deposited securities represented by it, or any securities pledged to secure such deposited securities, or any cash or other property at any time held by or subject to the control of such committee, on account of or in satisfaction of any bid, whether made by it or by any person, firm, or corporation approved by it, or towards obtaining funds for any payment on account or in satisfaction of any such bid; and to exercise absolute discretion with respect to the amount, if any, to be bid or paid by such committee, or by its authority, for any property or franchises, and, in case of a sale to others of any property or franchises, or otherwise, to receive, in its discretion, out of the proceeds of such sale or otherwise, any dividends in any form accruing on any of the deposited securities represented by, or on any property held by, such committee. Nothing in the plan or in this agreement contained shall be construed to require such committee to acquire any property of the railway company or any other property, the acquisition of which it may not deem advisable.

Anything which anywhere in the plan or in this agreement any committee is authorized to do or allow to be done, it may do or allow to be done by or through such agents or agencies as it may determine, or by or through others, with its approval, consent or acquiescence, or by contracting therefor with any person, firm, or corporation, and each of the three committees may do any and all things nec-

72 essary or proper to carry out the plan and this agreement or to prevent or to avoid opposition to or interference with the successful execution of the plan and this agreement.

Each of the committees, in respect of the securities represented by it, subject to the provisions of article fifth hereof, may exercise all or any of the foregoing powers, whether before or after the plan is declared operative or is abandoned or before or after the adoption or abandonment of any modified or substitute plan, and, if after the abandonment of the entire plan, in respect of any other plan adopted or approved by such committee as hereinafter in article ninth provided.

Fifth. The three committees severally and respectively agree that they will cooperate with the reorganization managers in endeavoring

to carry fully into effect the plan, or any modification thereof or substitute plan adopted in accordance with the provisions of this agreement. Upon the plan being declared operative as to the securities of any class the reorganization managers shall forthwith and without any further act be vested with and shall have, for all the purposes of the plan and of this agreement, and may exercise either in their own name or in the name of the respective committees and to the exclusion of such committees, the same powers, discretions, rights, and authority, and shall be subject to the same duties, in respect of the securities as to which the plan has been declared operative, as are conferred and imposed by this agreement upon the committee originally representing such securities. At any time or times after the plan shall have been declared operative as to the deposited securities of any class or classes as in article seventh hereof provided, the committee or committees representing such securities, will, if and to the extent requested by the reorganization managers, and upon provision being made for the payment of any taxes or other expenses incident to the transfer, assign and transfer to the reorganization managers, or to any person or persons designated by the reorganization managers, the securities of such class or classes deposited hereunder and represented by such committee, or the proceeds thereof then held by such committee hereunder, and any other property acquired by such committee pursuant to the provisions hereof, all in accordance with such request. All indebtedness, expenses, and obligations at the time charged upon the deposited securities or therefore incurred by any of the three committees and all which may thereafter be so incurred with the approval of the reorganization managers, and the compensation of each of the three committees, shall be and continue to be a charge against and lien upon the securities represented by the respective committees as to which the plan has been so declared operative, notwithstanding any such transfer.

Sixth. The reorganization managers may organize, or procure to be organized, one or more new companies wherever in their discretion they may determine, or they may adopt or use any company or companies whether now existing or not, and they may make or cause to be made consolidations, increases of capital stock and changes of stock having par value into stock without par value, creation and issuance of securities, leases, sales, purchases, agreements, and other arrangements by or between any such companies or with other companies, firms, or individuals; they may make or cause to be made conveyances or transfers of any properties or securities acquired by them or with their approval and may take or allow to be taken such proceedings as they may deem proper for the purpose of creating the new securities provided for in the plan and for carrying out all or any of the provisions of the plan and of this agreement. The reorganization managers may cause the ownership of all or any property of the new company to be either a direct ownership or ownership through bonds or through the shares of stock, or both, of any other

company, and may cause any mortgage or mortgages securing bonds of the new company to be either a direct lien upon any particular property, or a lien upon the bonds or shares of stock, or both, of any company owning such property.

The reorganization managers may prescribe the form and terms of all charters, certificates of incorporation, or articles of association or amendments thereof, regulations and by-laws of any corporations that may be utilized in the reorganization and of all certificates of stock, bonds, notes, trust certificates, and other securities at any time to be issued and all mortgages, trust indentures, trust agreements, applications for authority, and all other instruments at any time to be executed, issued, filed, entered, or made in connection with carrying out the plan. All references in the plan and this agreement to the delivery of preferred stock or common stock of the new company shall be understood to mean and include trust certificates in respect of such stock issued as provided in the plan. The reorganization managers may proceed under the plan and this agreement, or any part thereof, with or without foreclosure or enforcement of one or more of the existing mortgages and trust indentures constituting liens upon property of the railway company, and, in case of sale upon such foreclosure or enforcement, they may exercise any power conferred by this agreement either before or after any such sale or sales. In every case all the provisions of the plan and of this agreement shall apply equally to and in respect of any physical
73 property embraced in the reorganization and to and in respect of any securities representing any such property, it being intended that, for all purposes hereof, any such property and any securities representing such property may be treated or accepted by the reorganization managers as substantially identical. In case, in the opinion of the reorganization managers, any other or separate plan shall be necessary or expedient to effect the reorganization of any subordinate or other company or as to any property constituting a part of the system of the railway company, or for any consolidation or arrangement with, or for any sale, lease, or purchase to or from, any company or companies now in existence or to be hereafter formed, the reorganization managers may promote or promulgate the same and may participate therein, and may (with the consent of the committee, if any, representing such securities) deposit thereunder any securities thereby affected or to which such separate plan shall relate, or the reorganization managers may enter into any agreement with any committee representing holders of securities of any class necessary or expedient for such purposes. The reorganization managers may make equitable provision for any case of lost or destroyed securities, and provide for and make or cause to be made such issues of scrip as shall be necessary appropriately to represent any fractional interest in the new securities, and, to such extent as they shall deem necessary they may distribute such scrip to the depositors, and may, in their discretion, settle for and adjust any such fractional

interest in cash, or credit or pay such cash to the depositors in lieu of distributing to them such scrip. They may issue or cause to be issued temporary or interim certificates to represent the new securities or any of them. They may, in their discretion, set apart and hold or place in trust, or permit to be set apart and held or placed in trust, any part of the new securities to be issued and any cash which may be received from sales of new securities or otherwise, as they may deem suitable for the purpose of securing the application thereof for any of the purposes of the plan or of this agreement. The reorganization managers may receive and dispose of, or allow to be received or disposed of, by any other person, firm, or corporation, in accordance with any of the provisions of the plan and of this agreement, the new securities to be created; and they may vote, or cause or allow any person, firm, or corporation to vote, upon any or all stock until the same shall be transferred or distributed, as contemplated by the plan, to the persons, firms, or corporations entitled ultimately to receive the same. The reorganization managers may dispose of such of the new securities to be created and issued under the plan as may not be distributed under the plan and this agreement to holders of certificates of deposit, by the sale or delivery or transfer of such new securities to such persons, associations, firms, corporations, or syndicates as the reorganization managers may select for that purpose and upon such terms and conditions as they may, in their uncontrolled discretion, determine, or they may use such securities for the purpose of carrying out the reorganization in such manner as they may deem expedient. The reorganization managers may negotiate and contract with any persons, firms, corporations, or associations for the acquisition of railroads, property, or equipment for use in the operation of the railroads or property which it is contemplated shall be acquired by the new company, or for obtaining, continuing, granting, or effecting running powers, trackage rights, traffic rights, terminal facilities, exchanges of property, interchange of traffic, or any other conveniences or arrangements which they may deem necessary or desirable to obtain, continue, grant, or effect, including arrangements for merger, consolidation, purchase, sale, or lease, and any guaranty of securities, and may make contracts therefor, binding upon the new company; they may in their discretion make such arrangements as they shall determine for liquidating or otherwise dealing with the timber loan of the railway company referred to in the plan, whether by the sale of the collateral to said loan to the holders of the loan, with or without the guarantee of such collateral by the new company, or in any other manner; they may pledge to secure the payment, or the carrying out of any compromise or settlement, of the notes of the railway company to the United States Government or any of them, any of the new securities deliverable to depositors of stock or otherwise issuable under the plan; they may negotiate and contract with any persons, firms, corporations, or associations, or cause the new company so to contract with respect to any obligations of other railroad or terminal

companies in respect of which the railway company has any liability, and may cause the new company to assume all or any of such obligations as the same now exist, or as the same may be modified pursuant to any arrangements which the reorganization managers in their discretion may approve. The reorganization managers may in any manner purchase or sell at such price or prices as they may deem proper, and they may contract or enter into compromises or settlements in regard to, deal in, acquire, or dispose of any property, securities, claims, or obligations subject to any mortgage or mortgages or trust indenture or trust indentures securing the payment of any deposited bonds or any property, securities, claims, or obligations in which the railway company or any other corporation may have any interest, direct or indirect, or any property, securities, claims, or obligations of or against the railway company or any other corporation, or any receivers' certificates or obligations issued
74 or liabilities incurred by receivers of the railway company or of any other corporation, and, in general, any property, securities, claims, or obligations whatsoever which the reorganization managers may deem advisable to be so dealt with for the interest of the depositors or the new company, including, without limitation of the foregoing, obligations for which other specific provision may be made in the plan; they may compromise and adjust any claims in respect of liens prior to liens created in the reorganization and for the purpose of such adjustment and settlement, may extend such liens to any property acquired in carrying out the plan; in the event that any property is purchased by or for the reorganization managers, they may, in their discretion, exercise all powers as purchasers to approve, affirm, or disaffirm all contracts or leases appurtenant to all or any of said property so purchased, and, generally, they may make and ratify, or cause to be made and ratified, such purchases, contracts, stipulations, and arrangements as in their opinion will operate, directly or indirectly, to aid in the preservation, improvement, development, or protection of any property now owned by the railway company or any corporation subsidiary to or affiliated with the railway company or in which the railway company may be interested, or any property which the railway company or any such corporation shall have contracted to acquire or in which the railway company or any such corporation may be interested directly or indirectly, or any property acquired or contemplated to be acquired by or for the new company referred to in the plan, or for any purposes of the plan and of this agreement, or to prevent or avoid opposition to, or interference with, or otherwise said, the successful execution of the plan and this agreement.

Seventh. The reorganization managers in their sole and unrestricted discretion, which shall be conclusive, may determine whether and when a sufficient amount of the securities of the various classes shall have been deposited under the plan and this agreement to render it advisable to declare the plan operative and their determination

in that respect shall be final, binding, and conclusive upon all depositors. The reorganization managers may, in their discretion, declare the plan operative as to all classes of securities for which provision is made in the plan, or only as to certain classes of such securities and in that case from time to time as to certain other classes of such securities. In case the reorganization managers shall declare the plan operative as to the deposited securities of any class or classes, as aforesaid, they shall thereupon give notice to that effect in the manner provided in article thirteenth of this agreement.

The reorganization managers shall have power and authority whenever they shall deem it proper at any time either before or after the plan shall have been declared operative, to exclude from the plan any class or classes of securities (other than preferred stock or common stock of the railway company theretofore deposited under the plan and the holders of certificates of deposit for which shall have paid the first instalment of $14 for each share of preferred stock and $16 for each share of common stock as provided in the plan and shall not otherwise be in default under the plan) and whether or not the plan has been declared operative as to the securities of such class or classes, or to include or reinclude in the plan any class or classes of securities which may previously have been excluded. In case the reorganization managers shall exclude from the plan deposited securities of any class, or include or reinclude in the plan securities of any class or classes previously excluded, they shall thereupon give notice to that effect in the manner provided in article thirteenth of this agreement.

In case the reorganization managers shall exclude from the plan any securities of any specified class or classes, the securities of the class or classes so excluded from the plan, or the proceeds thereof or substitutes therefor then under the control of the reorganization managers or of any one of the three committees shall, subject however to the provisions of article ninth of this agreement, be delivered without charge to the holders of certificates of deposit representing the securities of such class, in proportion to their respective interests upon surrender of their respective certificates of deposit in negotiable form to the depositary or subdepositary which issued the same and upon payment of such taxes, if any, as may be imposed upon the transfer and delivery of the securities represented by such certificates of deposit.

The reorganization managers shall have power and authority, whenever they shall deem it proper, at any time either before or after the plan shall have been declared operative, to abandon, or from time to time alter, modify, or depart from the plan and this agreement, or any part thereof, or to substitute a new plan therefor. At any time or times, after any such modification or substitution, they may make any further modification or substitution, or may restore to the plan and this agreement any abandoned part or parts thereof, or discard any modification or substitution or any part

thereof, and seek to carry the plan and this agreement into effect as fully as if such modification or substitution had not been made.

75 They may also attempt to carry the plan and this agreement into effect, rather than to abandon or modify the same, or substitute any other plan, even though it be manifest that, if consummated, the plan and this agreement must depart from the original plan and this agreement or from some part thereof.

The reorganization managers may make such modification or adopt such substitute plan in their sole discretion, and any such modification or substitute plan shall bind and conclude the depositors of each class of deposited securities when approved by the committee representing such class: Provided, however, That if any of the three committees shall disapprove, or shall fail to approve, the proposed modification or substitute plan, or if in the judgment of the reorganization managers the proposed modification or substitute plan shall adversely affect to a material degree the interests of any class of depositors, or if in the judgment of any of the three committees the proposed modification or substitute plan shall adversely affect to a material degree the interests of any of the class of depositors represented by such committee, the reorganization managers shall file with the depositaries a statement of the modification or of the substitute plan, as the case may be, and shall give, in the manner provided in article thirteenth hereof, notice of the fact of such filing, specifying the class or classes of securities the committee representing which shall have disapproved, or failed to approve, such modification or substitute plan, or which are so deemed adversely to be affected as aforesaid by the proposed modification or substitute plan.

In case the reorganization managers shall give notice of any modification or substitute plan which shall be disapproved, or not approved, by the committee representing depositors of any class or classes of deposited securities, or which shall be so deemed adversely to affect to a material degree the interests of the depositors of any class or classes of deposited securities, then within thirty days after the first publication of the notice of such modification or substitute plan, holders of certificates of deposit representing any of the deposited securities of such class or classes may, upon surrender to the depositary or subdepositary issuing the same of their respective certificates of deposit in negotiable form and upon payment of (a) such taxes as may be imposed upon the transfer or delivery of the securities withdrawn; (b) their pro rata shares, as apportioned by the reorganization managers in their sole and unrestricted discretion, of the compensation and expenses, indebtedness, obligations, and liabilities of the reorganization managers and of the committee representing such securities (other than indebtedness, obligations, and liabilities of the reorganization managers or of such committee incurred for the acquisition of property which or substitutes for which shall then be held by the reorganization managers or such committee); and (c) if the reorganization managers in their discretion shall

require such sum as the reorganization managers in their sole and unrestricted discretion shall fix as the ratable proportion to be borne by such certificate holders of all indebtedness, obligations, and liabilities of the reorganization managers and of the committee representing such securities in respect of the acquisition of property which or substitutes for which shall then be held by the reorganization managers or such committee, withdraw from the plan and this agreement and thereupon be entitled to receive (1) securities of the character and to the amount represented by the certificates of deposit so surrendered or the proceeds thereof or substitutes therefor then under the control of the reorganization managers or of the committee representing such securities, in proportion to their respective interests, and (2), in the case of certificates of deposit for stock not at the time in default, the amount paid and noted thereon on account of the sum payable in respect of such stock and interest as provided by the plan, but without interest thereon, and also (3), if the reorganization managers shall have required payment of any sum pursuant to subdivision (c) hereof, certificates of interest representing their pro rata share as fixed by the reorganization managers in their sole and unrestricted discretion of any other securities or property acquired by the reorganization managers or such committee and not previously or simultaneously sold, contracted to be sold, or otherwise disposed of by the reorganization managers or such committee, or as the reorganization managers in their discretion may determine, certificates of interest in such form and with such provisions as the reorganization managers shall prescribe evidencing their pro rata interest in such securities or property and in the ultimate proceeds of any liquidation or dealings therewith by the reorganization managers or such committee in their uncontrolled discretion, but the interest of holders of such beneficial certificates in such proceeds shall not exceed in any event the ratable proportion of the indebtedness, obligations, and liabilities of the reorganization managers and of such committee stated in said subdivision (c) which the holders of the certificates of deposit against which said beneficial certificates have been issued shall have paid, without interest; provided, however (A), that, if and to the extent that such deposited securities shall have been so used or appropriated that the proceeds thereof or substitutes therefor shall in the opinion of the reorganization managers not be susceptible of immediate and convenient distribution, any withdrawing depositors shall receive, in lieu of any portion of
76 said proceeds or substitutes, certificates of interest in such form and containing such provisions as the reorganization managers may prescribe, and (B) that if, before the exercise of such right of withdrawal, the securities represented by such certificates of deposit respectively shall have been paid in full or shall have been credited with the full amount thereof out of the security therefor or otherwise, then the holders of such certificates of deposit shall not be entitled to the redelivery of such securities, respectively. The aggre-

gate of the amounts so payable under subdivision (b) in this paragraph above mentioned toward the compensation and expenses, indebtedness, obligations, and liability of the reorganization managers and of the committee representing such securities shall not exceed one per cent of the face amount of the securities so withdrawn. Every such depositor not so surrendering and withdrawing within said period of thirty days after the first publication of any such notice and whether or not having actual notice thereof shall be irrevocably and conclusively deemed and taken to have assented to the proposed modification or substitute plan, and whether or not otherwise objecting shall be bound and concluded thereby as fully and effectively as if he had actually assented thereto. All modifications or substitute plans so adopted by the reorganization managers, as herein provided, shall forthwith upon such adoption become a part of the plan and of this agreement, and all provisions and references concerning the plan shall apply to the plan as so modified or to such substitute plan. Any change or modification or substitute plan which shall increase the interest charges of the new company upon obligations to be delivered under the plan by more than $500,000 a year, shall be deemed adversely to affect to a material degree all the depositors, but any less increase may, in the discretion of any committee, be deemed not so to affect adversely any of the class of depositors represented by it.

The reorganization managers in their discretion may abandon the entire plan at any time, either before or after the same shall have been declared operative, upon giving notice of their election to abandon the same in the manner prescribed in article thirteenth hereof, but such abandonment shall not affect any previous acts or contracts done or approved by the reorganization managers.

Eighth. In case the reorganization managers shall not have begun the publication of a notice declaring the plan operative as to deposited securities of one or more classes on or before June 1, 1928, or such later date as the three committees may from time to time approve, or in case of the final abandonment of the entire plan, holders of certificates of deposit shall, upon the surrender to the depositary or subdepositary issuing the same of their respective certificates of deposit in negotiable form and upon payment of (a) such taxes as may be imposed upon the transfer and delivery of the securities withdrawn and (b) their pro rata shares, as apportioned by the reorganization managers in their sole and unrestricted discretion, of the compensation and expenses and all indebtedness, obligations, and liabilities of the reorganization managers and of the committee representing such securities, be entitled, subject however, to the provisions of article ninth hereof, to withdraw and receive (1) securities of the character and to the amount represented by the certificates of deposit so surrendered, or the proceeds of, or substitutes for, such securities then under the control of the reorganization managers or

of the committee representing such securities, and (2) in the case of certificates of deposit for stock not at the time in default, the amount paid and noted thereon on account of the sum payable in respect of such stock and interest as provided in the plan, but without interest thereon, and also (3) their proportionate part, as determined by the reorganization managers, in their sole and unrestricted discretion, of any other moneys, whether arising from the sale of other securities or property or otherwise then in the possession of the reorganization managers or such committee, or to which the reorganization managers or such committee may be entitled when received, and of any other securities or property acquired by the reorganization managers or such committee and not previously or simultaneously sold, contracted to be sold, or otherwise disposed of by the reorganization managers or such committee, including deposited stock not deliverable under the provisions of this agreement to holders of certificates of deposit for such stock, or, as the reorganization managers in their discretion may determine, certificates of interest representing their pro rata shares, as fixed by the reorganization managers in their sole and unrestricted discretion, of any such securities or property acquired by the reorganization managers or such committee, and not previously or simultaneously sold, contracted to be sold or otherwise disposed of by the reorganization managers or such committee, or, as the reorganization managers in their discretion may determine, certificates of interest in such form and with such provisions as the reorganization managers shall prescribe evidencing their pro rata interests in such securities or property and in the ultimate proceeds of any liquidation or any other dealing therewith by the reorganization managers or such committee, in pursuance of the provisions of such certificates.

In the event that any certificates of deposit shall not be so surrendered within three months after the publication of such notice of abandonment of the entire plan, the reorganization managers may at any time or from time to time thereafter, in their discretion,
77 without notice, sell or cause to be sold in block or in such parcels as they may determine, at one time, or from time to time, at public or private sale, and on such terms and conditions as they may deem expedient, to any person, firm, or corporation (including the firm and the corporation constituting the reorganization managers) all or any of the securities and other property which the holders of such certificates of deposit would be entitled upon surrender thereof to receive, and may apply the proceeds of such sale or sales, so far as necessary therefor, to the payment of the expenses of such sale or sales and of the sums which holders of such certificates of deposit would have been required to pay as aforesaid as their ratable shares of the compensation and expenses, indebtedness, obligations, and liabilities of the reorganization managers and the respective committees. The holders of such certificates of deposit shall

thereafter be entitled, upon surrender of their certificates as aforesaid and upon payment of such taxes as may be imposed upon the transfer and delivery of securities and property delivered, to receive (a) a proportionate part of such securities and property remaining unsold, if any, or, as the reorganization managers in their discretion may determine, certificates of interest representing their pro rata share, as fixed by the reorganization managers in their sole and unrestricted discretion, of any such securities and property remaining unsold, or, as the reorganization managers in their discretion may determine, certificates of interest in such form and with such provisions as the reorganization managers shall prescribe evidencing their pro rata interests in such securities and property and in the ultimate proceeds of any liquidation or other dealing therewith by the reorganization managers or the respective committees in pursuance of the provisions of such certificates, and (b) a proportionate part of any remaining net proceeds of any such sale or sales or other moneys in the possession of the reorganization managers or such committee or to which the reorganization managers or such committee may be entitled, when received.

The reorganization managers shall have power to determine and to apportion the ratable share of the compensation, expenses, indebtedness, obligations, and liabilities to be borne by each class of deposited securities represented by certificates of deposit and the ratable share of moneys and other securities and property, or certificates of beneficial interest therein, to be distributed to holders of certificates of deposit for each class of deposited securities upon any withdrawal under any of the provisions of this agreement or upon the abandonment of the plan, and the apportionments so made by the reorganization managers shall be final, binding, and conclusive upon all the depositors and upon any committees for, or other representatives of, such securities. The reorganization managers and the committees shall not be liable for the loss of any money disbursed by them or any of them for the purposes of the reorganization, nor for the depreciation in value of any property or securities by them acquired or received.

Every depositor who shall exercise any right of withdrawal conferred by any provision of this agreement (whether upon the exclusion from the plan of the securities of the class deposited by such depositor, or upon the publication of notice of any modification or substitute plan, or upon failure to publish notice declaring the plan operative on or before June 1, 1928, or such later date as the three committees may from time to time approve, or upon final abandonment of the entire plan) shall, by the surrender of his certificate of deposit and such withdrawal, thereupon, without further act, cease to have any rights hereunder and the exercise of such right of withdrawal shall release and discharge the reorganization managers, the committees representing the securities of the classes so withdrawn,

the depositaries and all other parties from all liability and accountability under the plan or this agreement: Provided, however, That such withdrawal shall not in any wise affect any rights or powers of the reorganization managers or any committee hereunder, or as may be reserved in any certificate of beneficial interest, to deal with any securities or property theretofore or thereafter acquired by the reorganization managers or such committee, notwithstanding the issuance to such withdrawing depositors of certificates of beneficial interest in respect of such securities or property, and specifically and without in any wise limiting such general authority, the reorganization managers or such committee may use the same for any purposes of the reorganization, accounting therefor to the holders of such certificates of interest at not exceeding the cost thereof without interest. Deposited securities may not without the consent of the reorganization managers be withdrawn from the plan and this agreement except as and when in this agreement provided.

Ninth. In case of the failure to publish notice declaring the plan operative as to deposited securities of one or more classes on or before June 1, 1928, or such later date as the three committees shall approve, or in case of the publication of notice of final abandonment of the entire plan, any one of the three committees may, or in case of the publication of notice of the exclusion from the plan and this agreement of any class or classes of securities, the committee or committees representing such class or classes of securities may, at any time after such date or after the commencement of the publication of any such notice of abandonment of the entire plan or notice of exclusion,

78 as the case may be, file with the depositary or depositaries for the securities of the class represented by such committee or committees, a statement that such committee or committees is or are willing to continue to represent, in case of such failure to publish notice declaring the plan operative or in case of the publication of notice of such abandonment, the holders of securities of any class or classes theretofore represented by it, or, in case of such exclusion, of any class or classes so represented and excluded; and in either case such committee shall give notice of such filing in the manner provided by article thirteenth hereof; and every depositor of securities of any such class or classes not surrendering his certificates of deposit in compliance with the provisions of this agreement in that respect and withdrawing as hereinbefore provided within the period of thirty days commencing upon the first publication of such notice of filing of such statement, shall be irrevocably and conclusively deemed and taken to have assented and agreed and, whether or not otherwise objecting, shall be bound and concluded and taken to have assented and agreed and, whether or not otherwise objecting, shall be bound and concluded thereby as fully and effectually as if he had actually assented and agreed, that the committee so filing such statement shall thenceforth continue to be vested under the terms hereof, as trustees of an express trust, with the legal title to all the deposited

securities of such class or classes not so withdrawn within said period of thirty days, or any proceeds thereof, with all the powers conferred upon such committee, or upon the reorganization managers, by this agreement and the deposited securities of such class or classes or the proceeds thereof or substitutes therefor, if then under the control of the reorganization managers, shall be delivered to or held subject to the order of such committee, subject, however, to the payment by such committee of such sums as would have been payable had such deposited securities or the proceeds thereof or substitutes therefor been delivered to the holders of certificates of deposit therefor withdrawing from the plan as above provided. Such committee will thereupon be authorized and empowered, if and whenever in its judgment it shall be advisable so to do, to prepare and adopt a plan and agreement, or plans and agreements, for the protection of the interest of such depositors so continued to be represented by it, and the enforcement of their rights, and for the reorganization or readjustment or financing of the railway company or other corporation, or the committee may approve any such plan and agreement although not prepared by the committee, and any such plan and agreement may contain any terms and provisions of any kind and character, whether contemplated by this agreement or not, in the uncontrolled discretion of such committee, deemed in the interest of such depositors. When it shall have adopted or approved any such plan and agreement, a copy thereof shall be lodged with the depositary or depositaries for the securities represented by such committee, with the written adoption or approval thereof endorsed thereon by a majority of the members of the committee as at the time constituted, and thereupon a brief notice of the fact of such adoption or approval shall be given in the manner prescribed by article thirteenth hereof. Any such depositor, within the period of thirty days, commencing on the first day of the publication of such notice may, upon like terms and conditions set forth in article seventh hereof in the case of a modification of the plan, withdraw from this agreement and from any such plan and agreement. Every such depositor not so withdrawing within said period of thirty days shall be deemed to have agreed to all the provisions of such plan and agreement and shall become a party thereto as fully as if such depositor had executed the same, and shall be conclusively and irrevocably bound thereby.

Tenth. Said firm of Kuhn, Loeb & Co. and said The National City Company shall be the reorganization managers under the plan and this agreement. Both said firm and said corporation as such reorganization managers shall act and concur in all steps and proceeding hereunder, and no action shall be taken except with the assent of both. Said firm of Kuhn, Loeb & Co. shall act as a copartnership, and in case of any change in said firm the firm of Kuhn, Loeb & Co. or its successor firms, as from time to time constituted, shall continue, with said The National City Company, or any successor corporation, as reorganization managers, with all the powers, rights, and

title vested in the reorganization managers hereunder. In the event of the consolidation of The National City Company with any other corporation, or its merger into any other corporation, the corporation formed by such consolidation, or into which such merger shall be made, shall be considered as The National City Company for all the purposes of the plan and this agreement.

The action of a majority of the members of any committee, as from time to time constituted and notwithstanding any vacancy, expressed from time to time at a meeting or by writing without a meeting, shall for all purposes constitute the action of such committee and have the same effect as if assented to by all the members of such committee. Each committee may adopt its own rules of procedure, and may appoint subcommittees with such powers as it may determine which may be discretionary. Any member of any committee may at any time resign by giving notice in writing to the chairman or secretary of such committee and the several committees may settle any actions or transactions with members resigning or with the personal representatives of deceased members and give full releases and discharges upon such resignations or settlements.

79 Any vacancy in any committee caused by resignation, death, or otherwise, may be filled by a vote of a majority of the remaining members of such committee, but the committees shall not be required to fill any vacancies so arising. Any committee may, in like manner, from time to time add to its members. All titles, rights, duties, power, and authority vested in any committee hereunder shall from time to time vest in the members of such committee for the time being without any further appointment, transfer, or assignment whatsoever and notwithstanding any vacancy. Any meniber of any committee may vote or act by proxy, who may but need not be a member of such committee. The depositaries and subdepositaries shall at all times be free from any liability or responsibility in dealing with or disposing of securities, money, or property deposited with them, respectively, as directed by the committee representing the same or by the reorganization managers, as the case may be, and the subdepositaries shall at all times be free from any liability or responsibility in dealing with or disposing of any securities or property deposited with them as directed by the respective depositaries for such securities.

The reorganization managers will endeavor to carry out the plan either in its original form or with modifications or substitutions as aforesaid, but neither the reorganization managers nor the committees nor the depositaries or subdepositaries assume any personal responsibility for carrying out the plan and this agreement, or any part of either, nor for the results of any steps taken or acts done for that purpose, nor shall the firm of Kuhn, Loeb & Co., nor any member thereof, nor the National City Company, nor any officer or director thereof, nor any member of any committee, nor any depositary

or subdepositary hereunder, be personally liable for any act or omission of the reorganization managers, or either of them, the committees, depositaries, or subdepositaries, or of any agent or employee selected by them or any of them in good faith, nor for any error of judgment or mistake of fact or law, nor for any acts except for his, its, or their own individual willful malfeasance or neglect. The reorganization managers or any of the committees or any subcommittees may advise with counsel, and shall incur no liability for anything done or suffered to be done in good faith in reliance upon the advice of counsel.

The reorganization managers shall, unless the plan shall be entirely abandoned, be entitled to compensation for their services as reorganization managers, and the amount of such compensation specified in the plan shall be binding and conclusive upon all parties. The reorganization managers shall have the right to form or procure the formation of any syndicate or syndicates which they may deem necessary or advantageous for carrying out the purposes, or any thereof, of the plan or of this agreement, whether or not mentioned in the plan or this agreement, and the firm of Kuhn, Loeb & Co., or any member of the firm of Kuhn, Loeb & Co., or the National City Company, or any officer or director or stockholder of the National City Company, and any of the committees, or any member of any of the committees, and any of the depositaries or subdepositaries, or any corporation, partnership, or association in which they or any of them are in any manner interested, or with which they or any of them are in any manner connected, may act as managers of any such syndicate or syndicates, and may so act in association with others or may be participants in any such syndicate or syndicates and may participate in any compensation, commission, profit, or other benefit accruing to such syndicate or syndicates or in connection with the formation or management thereof in addition to any other compensation to which they or any of them are entitled hereunder. The compensation of any such syndicate or syndicates, including the compensation of the managers thereof, shall be fixed by the reorganization managers, with the approval of the three committees, and as so fixed shall be binding and conclusive upon the depositors. The reorganization managers may, in their unrestricted discretion, fix the compensation of the committees, the depositaries and subdepositaries, and of all others entitled to compensation, other than as aforesaid syndicates and syndicate managers and other than their own compensation as reorganization managers, and all compensations so fixed shall be binding and conclusive upon the depositors and all other parties. The three committees shall not, however, be entitled to receive compensation under the plan if the plan shall be entirely abandoned. The reorganization managers, the committees, or any of the depositaries or subdepositaries hereunder may make deposits of securities hereunder, and shall be en-

titled to the same benefits as any other depositors and the reorganization managers, or the firm of Kuhn, Loeb & Co., or any member thereof, or the National City Company, or any officer or director thereof, or any of the committees, or any member of any committee, or any of the depositaries or subdepositaries hereunder, or any depositor, without accountability in respect thereof, may purchase or be or become pecuniarily interested in, or in the purchase of, any bonds, stocks, contracts, property, or matters with which the plan or this agreement concerns or to which it relates, whether or not mentioned in the plan, as syndicate managers, members, subscribers, or otherwise, and may furnish the railway company or the new company, or either of them, with moneys to enable them or either of them to carry out or participate in this plan, or any other plan, or be interested in the advancement of moneys in connection with
80 the reorganization or any modified or substitute plan of reorganization. The members of the firm of Kuhn, Loeb & Co., any officer or director of the National City Company, any member of any of the committees, or any officer or director of any depositary or subdepositary, or any of them, may be incorporators, officers, or directors of any company utilized in the reorganization, and may act as voting trustees or in any other capacity for the new company or the holders of its securities, and any of the depositaries or subdepositaries hereunder may be trustee under any new mortgage or trust indenture and may otherwise act as depositary or in any capacity for the new company or the holders of its securities.

The reorganization managers and the committees may employ counsel, depositaries, subdepositaries, engineering, and other experts, agents, and all necessary assistants, and may incur and discharge any and all expenses approved by the reorganization managers for the purposes of the plan or for carrying out or attempting to carry out the plan, as well as all expenses in connection with the preparation of the plan and this agreement, and all expenses of or incident to the receivership proceedings of the railway company and of any of its subsidiary or controlled or affiliated companies and all other expenses, liabilities, and disbursements in any manner connected with the plan or this agreement or which they may deem expedient to incur in undertaking to promote any of the purposes thereof. The committees and the reorganization managers, for any disbursements or expenditures made or liabilities incurred by or in respect of the reorganization or the carrying out or furtherance thereof, and for their compensation and the compensation of such person, firms, or corporations (including counsel, depositaries, and subdepositaries) as they may see fit to employ, shall have a lien upon all the deposited securities, and upon all property and securities acquired in the course of the reorganization, and, until their delivery or distribution, upon the new securities contemplated by the plan. The committees shall respectively assume as a charge upon the securities deposited with

their respective depositaries or subdepositaries proportionate amounts of the disbursements, expenses, indebtedness, liabilities, and compensation of the reorganization managers as the same shall be apportioned to the several classes of securities by the reorganization managers in their discretion and notice thereof given in writing to the respective committees, and any such apportionment made by the reorganization managers shall be binding upon all depositors, and the reorganization managers shall have a charge and lien for such disbursements, expenses, indebtedness, liabilities, and compensation upon the securities deposited under the plan and this agreement and the proceeds thereof, respectively, according to the apportionment thus made.

The reorganization managers shall, except as hereinabove expressly provided in respect of the compensation of any syndicate or syndicate managers, be the sole judges of the propriety or expediency of any and all expenses and the amounts thereof. They shall be the sole judges of the propriety or expediency of the compensation, expenses, and liabilities, including counsel fees, of any committee representing holders of securities of any class with which the plan deals, and all the accounts of such committees shall be filed with the reorganization managers if the plan shall be declared operative, and when approved by the reorganization managers shall be final, binding, and conclusive upon all parties having any interest therein.

All moneys paid under or with reference to the plan and this agreement shall, by any depositary receiving or holding such moneys, be paid on the written order of the reorganization managers to the reorganization managers, or either of them. The reorganization managers, or either of them, receiving such moneys may either as bankers hold the same without segregation or may deposit the same in whole or in part with any banks, bankers, or trust companies in any case subject to application for any of the purposes of this plan and as may be convenient and as from time to time may be determined by the reorganization managers, whose determination as to the propriety and purpose of any such application shall be final, and nothing in the plan is to be construed as limiting or requiring the application of specific moneys to specific purposes.

Eleventh. The reorganization managers may construe the plan and this agreement, and their construction thereof or action thereunder in good faith shall be final and conclusive. They may supply any defect or omission or reconcile any inconsistency in such manner and to such extent as shall be deemed by them necessary or expedient to carry out the same properly and effectively, and they shall be the sole and final judges of such necessity or expediency. The enumeration of specific powers by this agreement conferred shall not be construed to limit or to restrict the general powers conferred by this agreement or intended so to be, and it is hereby distinctly declared that it is intended by this agreement to confer on the committees and

the reorganization managers (and the depositors hereby severally confer upon the committees and the reorganization managers in respect of all deposited securities represented by them respectively and in all other respects) any and all powers which the reorganization managers may deem necessary or expedient, in their uncontrolled discretion, in or toward carrying out or promoting the pur-
81 poses of the plan and of this agreement, in their entirety or in part, to such extent and in such manner and with such modifications and substitutions as the reorganization managers may determine, subject to the provisions of article seventh hereof, even though any such power be apparently of a character not now contemplated, and any and every such power may be exercised as fully and effectively as if the same were herein distinctly specified and as often as for any cause or reason they may deem expedient, and all powers necessary or proper for any of the purposes hereof if not in this agreement expressed shall be implied. The methods and means to be adopted for or toward carrying out the plan and this agreement shall be entirely discretionary with the reorganization managers, and the plan and this agreement are in all respects to be liberally construed so as to enable the reorganization managers to carry into effect the plan, whether in the form hereto attached or with any such modifications or substitutions.

Any action contemplated in the plan or authorized by this agreement may be taken or performed whenever the reorganization managers, in their uncontrolled discretion, shall deem advisable. Any such action may be taken by the reorganization managers, or by any one approved by them, at any time when they shall deem the reorganization advanced sufficiently to justify such action, and, as they may deem necessary or expedient, the reorganization managers may defer or permit to be deferred the performance of any provision of the plan or of this agreement, or they may commit such performance to the new company, and may cause the new company to pay or assume any indebtedness or liabilities authorized or incurred by the reorganization managers or any committee or otherwise, in furtherance of the plan, or to make or assume any obligation which, in the judgment of the reorganization managers, may be necessary or expedient to carry out the plan and this agreement.

Twelfth. All securities deposted under or subject to the plan and this agreement, and all securities, claims, and property purchased or otherwise acquired under the plan or this agreement, shall remain in full force and effect for all purposes, and shall not be deemed to have been merged, satisfied, released, or discharged by any delivery of any securities, and no legal right or lien shall be deemed released or waived in respect of any such securities and property, and any judgment upon any claims (including claims and judgments for deficiencies), and all liens and equities, shall remain unimpaired and may be enforced by the committees and the reorganization managers

and their successors or assigns until paid or satisfied in full or expressly released by or with the consent of the committees or the reorganization managers, as the case may be, or their successors in interest, and the committees or the reorganization managers, as the case may be, or their successors in interest, or both, may in their discretion release the same or any thereof, either absolutely or upon such terms and conditions as they may prescribe.

Neither the committees nor the reorganization managers nor any depositor, by becoming a party hereto, releases, surrenders, or waives (except to or in favor of the committees or the reorganization managers) any lien, right, or claim in favor of the securities deposited under or subject to the plan and this agreement, and all such liens, rights, and claims shall vest unimpaired in the committees or the reorganization managers and (unless otherwise determined by the reorganization managers) in their assigns, transferees, or successors in interest, and any purchase or purchases by or on behalf of the committees or the reorganization managers, their nominee or nominees under any decree for the enforcement of any such lien, right, or claim, shall vest the property purchased in the committees or the reorganization managers or in their said nominee or nominees. No right is conferred nor any trust, liability, or obligation (except the agreements herein contained in favor of depositors) is created by the plan or by this agreement, or is assumed hereunder or by or for the new company in favor of any creditor or any holder of any of the securities of or claims against the railway company or in favor of any company now existing or hereafter to be formed (whether such claim be based on any bonds, coupons, guaranties, notes, stocks, or other securities, liens, debts, or otherwise), in respect of any of the securities deposited under the plan and this agreement or any moneys paid to or received by the committees or the reorganization managers or any depositary or sub-depositary hereunder, or in respect of any property acquired by purchase at any judicial sale or otherwise, or in respect of any new securities to be issued hereunder, or in respect of any other matter or thing whatsoever.

Any obligation in the nature of floating debt or otherwise against the railway company or any property embraced in the plan either as proposed or as carried out, or any securities held as collateral for any such obligation, or any certificates of indebtedness, obligations, or liabilities of the railway company, or of any receiver or receivers of the railway company, which may be paid, compromised, acquired, or extinguished by any committee or by the reorganization managers as hereinbefore provided, may be utilized or held by such committee or by the reorganization managers, their nominee or nominees,
82 for such period, and in such manner and upon such terms as the reorganization managers may deem proper for the purposes of the reorganization; but nothing in the plan or in this agreement contained is intended to constitute, nor shall any provision

herein constitute, any liability or trust in favor or in respect of any such obligation.

Thirteenth. All calls or notices hereunder by the reorganization managers or any committee, except when herein otherwise expressly provided, shall be inserted in two newspapers of general circulation in the city of New York, and in such additional newspapers in New York or elsewhere, if any, as the reorganization managers or such committee may determine, once in each of four successive calendar weeks, on any day of the week. Any call or notice whatsoever, when so published by the reorganization managers or by any committee, shall be taken and shall be considered as though personally served on all parties hereto and upon all parties to be bound thereby as of the date of the first insertion thereof, and, except as hereinafter in this article thirteenth provided, such publication shall be the only notice required to be given under any provision of the plan or of this agreement and shall be sufficient for all purposes whether or not actually brought to the notice of any depositor. Any depositor may furnish an address to the secretary of the respective committee representing the deposited securities of the class deposited by such depositor to which calls and notices may be mailed and each depositor so furnishing an address the reorganization managers and the committees, respectively, in addition to publication as aforesaid, will mail, postage prepaid, a copy of any such call or notice within five days after the date of the first publication thereof, but neither the failure to mail any such notice or call to any depositor nor the failure of any such depositor to receive any such notice or call shall affect any proceedings taken upon or pursuant to notice or call given by publication as aforesaid.

Fourteenth. No estimate, explanation, or suggestion nor anything else contained in the introductory statement hereto or in the plan or this agreement, or in any circular issued or which may hereafter be issued by the board of directors or executive committee or any officer or officers of the railway company, or by the committees or any of them, or the reorganization managers, or by any depositary or subdepositary or anyone else, is intended or is to be taken as a representation or warranty or as a condition of or inducement for deposit or assent under the plan and this agreement or any modification thereof or amendment thereto, and no defect or error therein shall release any deposit thereunder or affect or release any assent thereto, except by written consent of the reorganization managers. Except when otherwise specifically stated, the statements of new capitalization in comparison with former capitalization and the other estimates and provisions of the plan omit consideration of, and make no allowance for, such new securities as may be authorized and ultimately issued by the new company on account of guaranties, endorsements, contingent liabilities, and unsecured liabilities of the railway company, nor for such variations and departures from the plan and the

estimates therein contained in respect of the property and capital of the new company and the amount and character of the securities to be issued and the security therefor or otherwise, as may result from the plan being declared operative notwithstanding that some of the securities authorized to be dealt with thereunder may not have been deposited under this agreement, nor for such additional securities as may be required in connection with the organization or compensation of syndicates.

Fifteenth. The accounts of the reorganization managers shall be filed, within one year after the reorganization shall be determined by the reorganization managers to have been sufficiently completed for the purpose, with the board of directors of the new company, unless a longer time be granted by said board of directors. Such accounts, when approved by such board of directors and until disapproved by said board, shall be final, binding, and conclusive upon the depositors and upon all other parties having any interest therein, and upon such approval, whenever and however given, the committees and the reorganization managers shall respectively be discharged, and all liability and accountability on their part shall cease.

The acceptance of any new securities by any depositor shall estop such acceptor from questioning the conformity of such securities in any particular to any provision of the plan, and shall constitute full ratification by such acceptor of all acts and proceedings of the reorganization managers and of the committees. The reciept by the holders of certificates of deposit representing a majority in amount of any class of securities, of cash or new securities or other property or certificates of interest therein distributed under any of the provisions of this agreement, and the surrender of certificates of deposit representing a majority in amount of the securities of such class, shall constitute a release and discharge of the reorganization managers, the committees, and the depositaries on the part of the holders of all outstanding certificates for securities of such class from all liability and accountability of every kind, character, and description whatsoever, save the obligation to make delivery of a like pro rata amount of cash, securities, or other property or certificates of interest therein upon the surrender of outstanding certificates of deposit for securities of such class.

83 Sixteenth. The plan and this agreement shall bind and benefit the several parties, including the depositors and their and each of their survivors, heirs, executors, administrators, successors, and assigns.

In witness whereof Kuhn, Loeb & Co. have subscribed this agreement, or a counterpart thereof, and the National City Company has caused this agreement, or a counterpart thereof, to be executed in its corporate name by its president or one of its vice presidents, and its corporate seal to be hereunto affixed and attested by its secretary or one of its assistant secretaries, the members of each of the committees above named have executed this agreement, or a counterpart thereof,

and the depositors have become parties hereto in the manner herein provided, all as of date hereof.

Executed in counterparts.

KUHN, LOEB & CO.,
[CORPORATE SEAL.] THE NATIONAL CITY COMPANY,
By CHARLES E. MITCHELL, *President*,
Reorganization Managers.

Attest:

CHARLES S. WALL, *Secretary.*

Frederick H. Ecker, Bertram Cutler, Edward D. Duffield, Samuel H. Fisher, Jerome J. Hanauer, William E. Knox, Charles E. Mitchell, Charles A. Peabody, H. F. Whitcomb, the committee representing holders of the following bonds of Chicago, Milwaukee and St. Paul Railway Company: Four per cent bonds, due 1925; European loan bonds; four and one-half per cent bonds, due 1932; four per cent bonds, due 1934; Puget Sound bonds; and refunding bonds, Series A and Series B.

Mortimer N. Buckner, Arthur W. Loasby, Oliver C. Fuller, John McHugh, Harold I. Pratt, the committee representing holders of preferred stock of Chicago, Milwaukee and St. Paul Railway Company.

Donald G. Geddes, George W. Davison, Bayard Dominick, Stanley Field, Walter L. Johnson, Percy A. Rockefeller, the committee representing holders of common stock of Chicago, Milwaukee and St. Paul Railway Company.

84 *Exhibit B to petition*

Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Chicago, Milwaukee and Pacific Railroad Company, Robert T. Swaine, and Donald C. Swatland and Kuhn, Loeb & Co. and the National City Company, as reorganization managers.

AGREEMENT

(Dated April 11, 1927)

85 Agreement dated April 11, 1927, between Chicago, Milwaukee, St. Paul and Pacific Railroad Company, a corporation organized and existing under the laws of the State of Wisconsin (hereinafter called the railroad company), of the first part, Chicago, Milwaukee and Pacific Railroad Company, a corporation organized and existing under the laws of the State of Delaware (herein-

after called the Delaware Company), of the second part, Robert T. Swaine and Donald C. Swatland (hereinafter called the purchasers), of the third part, and Kuhn, Loeb & Co. and the National City Company, as reorganization managers under a plan and agreement dated June 1, 1925, for the reorganization of Chicago, Milwaukee and St. Paul Railway Company, as modified November 19, 1925 (hereinafter called the managers), of the fourth part.

Whereas the purchasers, as joint tenants and not as tenants in common, have purchased as an entirety, subject to confirmation by the courts hereinafter mentioned, for the sum of $140,000,000, all of the property directed to be sold in and by a decree of the District Court of the United States for the Northern District of Illinois, Eastern Division, made and entered April 26, 1926, in a certain consolidated cause in equity therein pending entitled "Guaranty Trust Company of New York and Merrel P. Callaway, as trustees, complainants, against Chicago, Milwaukee and St. Paul Railway Company et al., defendants, No. 4931," and in the constituent causes of said consolidated cause, and pursuant to decrees of the District Courts of the United States for the District of Minnesota, Fourth Division, for the District of Montana, and for the Western District of Michigan, Northern Division, made and entered respec-
86 tively, on April 29, 1926, May 1, 1926, and May 6, 1926, in certain consolidated causes in equity pending in said courts and similarly entitled, the causes being respectively numbered 462, 173, and 304, and in the constituent causes of said consolidated causes and pursuant to a decree of the District Court of the United States for the Southern District of New York, made and entered June 21, 1926, in a certain cause in equity therein pending entitled "Binkley Coal Company, plaintiff, against Chicago, Milwaukee and St. Paul Railway Company, defendant, No. E. 31–294"; and

Whereas the purchasers, as joint tenants and not as tenants in common, have assigned, transferred, and set over unto the Delaware company, subject to the approval of any public authorities having jurisdiction in the premises, all their right, title, and interest in and to all property of every kind, character, and description purchased at said sale; and

Whereas, by decrees entered by said courts, respectively, in said causes, on January 19, 1927, January 27, 1927, January 29, 1927, February 2, 1927, and February 4, 1927, said sale has been approved, confirmed, and made final and absolute, subject to all the terms and conditions of said decrees of sale and of said decrees confirming sale; and

Whereas said purchase was made in furtherance of, and for the promotion of, said plan and agreement dated June 1, 1925, for the reorganization of Chicago, Milwaukee and St. Paul Railway Company (hereinafter called the railway company), as modified November 19, 1925 (said plan and agreement as so modified being herein-

after together called the reorganization plan), under which the managers are reorganization managers; and

87 Whereas the railroad company has been organized to be the new company referred to in the reorganization plan; and

Whereas the parties have knowledge of the terms of the reorganization plan and of said decrees and have duly authorized the execution and delivery of this agreement:

Now, therefore, for a valuable consideration, it is agreed as hereinafter set out—

First. The purchasers and the Delaware company have assigned, transferred, and set over, and hereby assign, transfer, and set over, unto the railroad company, its successors and assigns, subject to the approval of any public authorities having jurisdiction in the premises, all the right, title, and interest of the purchasers and the Delaware company in and to all property of every kind, character, and description sold at said sale; the right to receive a deed or deeds or other instrument or instruments of conveyance, assignment, and transfer of said property; the successful bid at said sale under said decrees; the rights and interests under said decrees of the successful bidders for said property; the right to receive cash, current assets, and materials and supplies, all as provided in said decrees, and all the right, title, and interest under said decrees in and to all bonds and coupons, and certificates of deposit therefor, deposited by the purchasers with the special master appointed to make said sale in order to qualify them to bid at said sale.

To have and to hold the same unto the railroad company, its successors and assigns, to its and their own use forever;

Subject, however, to all the terms, conditions, and reservations of said decrees.

88 Second. The railroad company hereby for itself, its successors and assigns, covenants and agrees that the railroad company will pay and discharge, in accordance with the provisions of said decrees, the purchase price not heretofore paid of all the property sold in execution of said decrees, and also will perform, satisfy, and discharge each and all of the terms of said decrees, and of any orders which may be made by said courts, or any of them, on the part of the purchasers of said property required to be performed, satisfied, and discharged (including among other things, but without limiting the generality of the foregoing, the terms of said decrees requiring the purchasers to pay and discharge certain costs, compensations, expenses, and liabilities and to assume and discharge all obligations of the receivers, in addition to the amount of the accepted bid for said property), and will enter its appearance in the above-mentioned causes, and will indemnify and forever hold harmless the Delaware company, its successors and assigns, and the purchasers, and each of them, and the survivor of them, and each and every of the heirs, executors, and administrators of the purchasers, or of either of them, from and against any and all loss, damage, expense, and liability whatsoever which may have been in-

curred or which may hereafter be incurred by the Delaware company, its successors and assigns, or by the purchasers, or either of them, or the survivor of them, or the heirs, executors, and administrators of the purchasers, or of either of them, by reason of the bid of the purchasers at said sale or the assignment thereof to the Delaware company or the acceptance of said bid or by reason of any acts or things required by said decrees or by any order made by any of said courts to be assumed and performed by the purchasers or by the Delaware company, or by the railroad company, or otherwise arising out of or connected with the acquisition or transfer of any property by the purchasers purchased as hereinbefore recited,
89 or by reason of any acts done or suffered or permitted to be done by the purchasers or by the Delaware company under, pursuant to, or concerning the reorganization plan; and said conveyance, assignment, and transfer by the Delaware company and the purchasers is made subject to the obligation of the railroad company to perform its agreements herein contained, and the same shall be a charge upon all the above-mentioned railroads, franchises, and other property to be conveyed, assigned, and transferred to the railroad company, prior to any mortgage or other lien which may be created by the railroad company, its successors and assigns, thereon; and it is further specifically declared that the railroad company may exercise any and every right, power, and privilege conferred on the purchasers or their assigns by said decrees.

Third. The managers will, upon the completion of the reorganization pursuant to the reorganization plan, or earlier at the election of the managers, assign, transfer, and set over, or cause to be assigned, transferred, and set over, to the railroad company, to the extent that the same continue subject to the reorganization plan and subject to any then existing liens thereon, all of the following described securities, and claims (together with any coupons or claims for interest thereon) which have been or may be deposited or assigned under the reorganization plan, or which may otherwise come into their control as reorganization managers under the reorganization plan, viz:

The four per cent gold bonds of 1925 of the railway company;

The four per cent fifteen-year European loan of 1910 bonds of the railway company;

The 4½% convertible gold bonds of the railway company;

The twenty-five year four per cent gold bonds of 1909 of the railway company;
90 The General and refunding mortgage gold bonds, Series A and Series B, of the railway company;

The first mortgage four per cent gold bonds of Chicago, Milwaukee and Puget Sound Railway Company;

The $20,000,000 6% note of the railway company to the United States Government, date November 1, 1920, due March 1, 1930, and the $32,000,000 general and refunding mortgage bonds, Series Z, of the railway company, pledged to secure said note;

The $25,000,000 6% note of the railway company to the United States Government, dated March 1, 1922, due March 1, 1927, and the $12,000,000 general mortgage bonds, Series D, of the railway company, and $30,329,000 general and refunding mortgage bonds, Series Z, of the railway company, pledged to secure said note;

The $10,000,000 6% note of the railway company to the United States Government, dated December 15, 1922, due March 1, 1930, and the $6,000,000 general mortgage bonds, Series D, of the railway company and $10,500,000 general and refunding mortgage bonds, series Z, of the railway company, pledged to secure said note;

The claims of general creditors.

The managers, if they so elect, may first cause said bonds and claims to be applied, if and so far as said bonds and claims are applicable under the provisions of said decrees, toward the payment of the purchase price of the property sold under said decrees and acquired or to be acquired by the purchasers or their assigns, and
91 to the extent not so applied, to be transferred to the railroad company. If such assignment and transfer is made prior to such application, the railroad company will cause said bonds and claims to be applied, if and so far as said bonds and claims are applicable under the provisions of said decrees, toward the payment of the purchase price of the property sold under said decrees and acquired or to be acquired by the purchasers or their assigns.

Fourth. In respect of the acquisition of the properties, rights, and securities to be acquired by it under the provisions of this agreement, the railroad company will, in addition to other sums payable by it and obligations incurred by it hereunder, issue and deliver its bonds and stocks as follows:

The railroad company will issue and deliver, at such time or times as the managers shall request, to such persons, firms, and corporations as the managers may from time to time designate—

$106,395,096, principal amount, of fifty-year five per cent mortgage bonds of the railroad company, $45,718,424, principal amount, of said bonds to bear interest from February 1, 1925, and $60,676,672, principal amount, of said bonds to bear interest from the interest payment date next preceding their issue;

$182,873,693, principal amount, of five per cent convertible adjustment mortgage bonds of the railroad company, interest on which shall be computed from February 1, 1925;

$118,845,800, par value, of the preferred stock of the railroad company, consisting of 1,188,458 shares of the par value of $100 each, together with such additional par amount of said preferred stock as may be required to provide for the settlement
92 and discharge of unsecured claims now or hereafter arising against the railway company, at the rate of one share of preferred stock for each $100 face amount of such claims as finally allowed and established; and

1,174,060 shares of the common stock of the railroad company without nominal or par value.

Said bonds and stocks, and the mortgages under which said bonds shall be issued, shall be of the character and in the forms which have been or may be approved by the managers pursuant to the reorganization plan. The property, rights, and securities to be acquired by the railroad company pursuant to this agreement shall be received in full payment for all bonds and stocks to be delivered by the railroad company under this agreement, and all of said stock, both preferred and common, shall be fully paid and nonassessable. The railroad company will also authorize the creation of its first and refunding mortgage to secure an issue of first and refunding bonds of the character and in the form which has been or may be approved by the reorganization managers pursuant to the reorganization plan.

Fifth. The managers will apply or cause to be applied the bonds and stocks of the railroad company to be delivered as hereinabove provided only in the manner and for purposes authorized by the reorganization plan and, to the extent not so used for such purposes within such period as the managers shall fix, will place such bonds and stocks in the treasury of the railroad company. The managers will pay over, or cause to be paid over, to the railroad company all cash received by them under the reorganization plan (other than a sum equal to $1.50 per share of the existing preferred stock and common stock of the railway company which, as provided in
93 the reorganization plan, is to be set aside to provide for the compensation of the managers and the committees, fixed as therein provided, and the fees and disbursements of their counsel and of all depositaries and subdepositaries) and remaining after making or providing for all payments therefrom permitted or contemplated by the reorganization plan or this agreement which the managers in their uncontrolled discretion may make for the purpose of effecting any of the purposes of the reorganization plan, all of which payments the railroad company hereby authorizes and approves. The managers will account to the railroad company for any proceeds of property purchased by the purchasers as aforesaid and acquired by them, which shall not be assigned or conveyed to the railroad company, or to some other corporation, all, or substantially all, of the issued and outstanding capital stock of which shall be assigned or transferred to the railroad company.

Sixth. The railroad company at any time, and from time to time hereafter, as thereunto requested by the managers, will make and perform any agreements which the managers may require, and will assume, adopt, and, at its own proper cost and expense, fully carry out, and perform any and all agreements which may have been made, or which may be made, by the managers acting under the reorganization plan, with respect to the issue of stocks and bonds of the railroad company as contemplated in the reorganization plan or otherwise, and also assume, adopt, and, at its own proper cost and expense, fully carry out and perform all obligations of the managers

under the reorganization plan and under any other agreement with any party whomsoever, or in any other manner heretofore or hereafter imposed upon or undertaken by the managers; and, in general, the railroad company, upon the request of the managers, will at all times and in all ways, at its own proper cost and expense, do
94 and perform all acts and execute any and all instruments in the judgment of the managers suitable fully to carry into effect the reorganization plan according to the terms and intention thereof, subject to all such modifications as may from time to time be made in pursuance thereof. The railroad company will at any time, at the request of the managers, take over and assume, at its own proper cost and expense, the completion, in whole or in part, of the reorganization under the reorganization plan, in accordance with the provisions of the reorganization plan and of any agreements which may have been made, or which may be made, by the reorganization managers.

Seventh. The railroad company, from time to time, on demand of the managers, will pay to or on the order of the managers the amount of all obligations and liabilities which the managers shall have incurred, or may hereafter incur for, and will reimburse the managers for any payments made or to be made by them for, expenses under the reorganization plan in carrying out of the reorganization (other than the compensations and expenses which under the reorganization plan are to be paid out of the sum equal to $1.50 per share of the existing preferred stock and common stock of the railway company hereinabove mentioned), and the railroad company will indemnify and hold harmless the managers and each of them, and each member of the firm of Kuhn, Loeb & Co. and each officer and director of the National City Company, the managers as aforesaid, from and against all costs, expenses, liabilities, and charges whatsoever incurred, or which may be incurred, by the managers, or either of them, in carrying out the reorganization plan (other than as aforesaid), or by reason of any acts done or suffered or omitted to be done thereunder, and the railroad company hereby
95 authorizes, confirms, ratifies, and approves all action taken or hereafter to be taken by the managers to carry out the reorganization plan or in connection therewith.

Eighth. The railroad company, the purchasers, and the managers will in all particulars cooperate with each other and assist each other in carrying this agreement into effect and in accomplishing the purposes of the reorganization plan as now existing, or as it may from time to time be modified in pursuance of the provisions thereof. The provisions of this agreement and all rights and obligations hereunder so far as they relate to any subject matter covered thereby are intended to be in confirmation of and subject to and not in derogation of the provisions of the reorganization plan.

Ninth. The managers reserve unimpaired all rights and powers under the reorganization plan and may construe the reorganization

plan and their construction thereof shall be conclusive; they may supply any defect or omission therein, and may abandon the reorganization plan as therein provided and may modify from time to time in their discretion the reorganization plan within the limits therein authorized, and in case of any such modification this agreement shall apply in all respects to such modified reorganization plan.

Tenth. This agreement and each and every provision thereof may at any and all times be modified, extended, or enlarged by agreement of the parties.

Eleventh. This agreement is subject to the completion of the necessary corporate proceedings by the railroad company to enable it to acquire the property sold at said sale, and to create and issue the stocks and bonds to be issued by the railroad company as hereinabove provided, and to the approval of any public authorities having
96 jurisdiction in the premises of the acquisition by the railroad company of such property and of the issue by the railroad company of such stocks and bonds.

Twelfth. Nothing in this agreement expressed or implied is intended, or shall be construed, to confer upon, or to give to, any person or corporation, other than the parties hereto, any right, remedy, or claim, under or by reason of this agreement or any covenant, condition, or stipulation hereof; and all the covenants, stipulations, promises, and agreements in this agreement contained shall be for the sole and exclusive benefit of the parties hereto. The managers sign and act only as reorganization managers under the reorganization plan, and neither Kuhn, Loeb & Co., nor any member of said firm, nor the National City Company, nor any officer or director of said corporation, incurs any personal responsibility whatsoever.

Thirteenth. In consideration of the premises and of the mutual covenants herein contained, the Delaware company releases and forever discharges the purchasers, and each of them, and the managers, respectively, and the purchasers, and the managers, respectively, release and forever discharge the Delaware company from all obligations, liabilities, claims, or demands, of whatsoever nature, in law or in equity, for, upon, or by reason of any matter, cause, or thing whatsoever, from the beginning of the world until the day of the date of these presents.

Fourteenth. The term the managers, whenever used in this agreement, shall be deemed to mean the firm of Kuhn, Loeb & Co. and the National City Company. The firm of Kuhn, Loeb & Co. shall be deemed to mean the firm of Kuhn, Loeb & Co. or its successor firms as from time to time constituted, and the National City Company shall be deemed to mean the National City Company or any successor corporation to it.

In witness whereof the railroad company, the Delaware com-
97 pany, the purchasers, and the managers have duly executed or

caused to be executed this agreement in quadruplicate as of the day and year first above written.

CHICAGO, MILWAUKEE, ST. PAUL
AND PACIFIC RAILROAD COMPANY,
By WILLIAM O. DOUGLAS, *Vice President.*

[CORPORATE SEAL.]
Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Incorporated, 1927, Wisconsin.

Attest:
ALFRED MCCORMACK,
Assistant Secretary.

CHICAGO, MILWAUKEE AND PACIFIC RAILROAD COMPANY,
By JNO. J. MCCLOY, *President.*

[CORPORATE SEAL.]
Chicago, Milwaukee and Pacific Railroad Company, Incorporated, 1926, Delaware.

Attest:
GORDON E. YOUNGMAN, *Secretary.*

ROBERT T. SWAINE,
DONALD C. SWATLAND,
Purchasers.

KUHN, LOEB & CO.,
THE NATIONAL CITY COMPANY,
By PIERPONT V. DAVIS, *Vice President.*
As Reorganization Managers Under the Reorganization Plan.

98 *Exhibit C to petition*

Before the Interstate Commerce Commission

Chicago, Milwaukee, St. Paul and Pacific Railroad Company

APPLICATION

(Finance Docket No. 6240)

99 Before the Interstate Commerce Commission

IN THE MATTER OF THE APPLICATION OF Chicago, Milwaukee, St. Paul and Pacific Railroad Company for authority (*a*) to acquire lines of railroad, leasehold, and other rights and interests in lines of railroad and stocks of corporations owning lines of railroad, formerly of Chicago, Milwaukee and St. Paul Railway Company; (*b*) to operate such lines of railroad; (*c*) to assume contracts and mortgages of Chicago, Milwaukee and St. Paul Railway Company; and (*d*) to issue stocks and bonds	Finance Docket No. —.

1. The exact corporate name of the applicant is Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

2. The names, titles, and post-office addresses of the applicant's president (by whom this application is signed, verified, and filed on behalf of the applicant and to whom correspondence in regard to this application should be addressed), secretary, and attorneys are as follows:

Title	Name	Post-office address
President	John J. McCloy	52 William St., New York, N. Y.
Secretary	Gordon E. Youngman	52 William St., New York, N. Y.
Attorneys for the applicant	Cravath, Henderson & de Gersdorff	52 William St., New York, N. Y.

100 3. The applicant was organized and received its present charter under the laws of the State of Wisconsin. Its date of incorporation was March 31, 1927. The applicant was organized to be a carrier by railroad and to engage in the transportation of persons and property subject to the interstate commerce act, but the applicant does not now own or operate any lines of railroad.

4. A copy of the applicant's articles of organization, certified by the Secretary of State of the State of Wisconsin, is filed herewith, marked "Schedule I" and made a part hereof by reference thereto.

5. Subject to the approval by the commission of this application, the applicant proposes to operate in the States of Idaho, Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, South Dakota, Washington, and Wisconsin.

6. This application is—

(a) For the approval and authorization by the commission, pursuant to and to the extent required by the applicable provisions of the interstate commerce act, of the acquisition by the applicant of the lines of railroad, leasehold, and other rights and interests in lines of railroad and stocks of corporations owning lines of railroad, in each case with their appurtenances, hereinafter described, formerly of Chicago, Milwaukee and St. Paul Railway Company:

(b) For a certificate, pursuant to and to the extent required by the applicable provisions of the interstate commerce act, that the present or future public convenience and necessity require, or will require, the operation by the applicant of such lines of railroad and appurtenances:

(c) For the authorization by the commission, pursuant to
101 and to the extent required by the applicable provisions of the interstate commerce act, of the assumption by the applicant of (1) any lease or any traffic, trackage, terminal, crossing, or operating agreement, or other contract not fully performed, made by Chicago, Milwaukee and St. Paul Railway Company, or any predecessor company, or by the receivers hereinafter mentioned, including any obligations, as lessor, lessee, guarantor, indorser, surety, or otherwise, in respect of the securities of any other person, natural or artificial

(including any contract which the applicant may be entitled under the provisions of the final decrees hereinafter mentioned to disavow by election made within one year from the date of the delivery of the deeds or other instruments of conveyance of the property sold under said final decrees), and (2) any mortgage, not foreclosed by said final decrees, upon the property sold under said final decrees, or any bonds issued under any such mortgage; and

(d) The authorization by the commission, pursuant to and to the extent required by the applicable provisions of the interstate commerce act, of (A) the issue by the applicant in temporary or in definitive form, and if in temporary form the issue of securities of like character in definitive form in exchange therefor, of—

$106,395,096, principal amount, of fifty-year five per cent mortgage bonds, Series A, Series B, or Series C, of any series, one or more (and in the first instance, in respect of any thereof, an equal principal amount of scrip certificates), $45,718,424, principal amount, of said bonds to bear interest from February 1, 1925, and $60,676,672, principal amount, of said bonds to bear interest from the interest payment date next preceding their issue;

102 $182,873,693, principal amount, of five per cent convertible adjustment mortgage bonds, Series A, Series B, or Series C, of any series, one or more (and in the first instance, in respect of any thereof, an equal principal amount of scrip certificates), interest on said bonds to be computed from February 1, 1925;

$118,845,800, par amount, of preferred stock, together with such additional par amount of said preferred stock as may be required to provide for the settlement and discharge of unsecured claims now or hereafter arising against said Chicago, Milwaukee and St. Paul Railway Company, at the rate of one share of such preferred stock for each $100, face amount, of such claims as finally allowed and established;

1,174,060 shares of common stock, without nominal or par value; and the issue from time to time of such additional amounts of preferred stock up to $91,436,900, par amount, and of such additional amounts of common stock up to 914,369 shares, as may be necessary to effect the conversion of said convertible adjustment mortgage bonds, upon the surrender thereof in accordance with the provisions of the adjustment mortgage under which said bonds are to be issued, into preferred stock and common stock of the applicant at the rate of five shares of preferred stock and five shares of common stock for each $1,000, principal amount, of bonds converted; and (B) the issue by the applicant, in temporary or definitive form, and if in temporary form the issue of securities of like character in definitive form in exchange therefor, and the sale or pledge thereof by

103 the applicant for its corporate purposes, of the general mortgage five per cent gold bonds, Series D, secured under the general mortgage of Chicago, Milwaukee and St. Paul Railway Company, dated May 1, 1889, at any time in the treasury of the applicant,

up to a principal amount equal to the amount of the expenditures, not otherwise capitalized, of the receivers hereinafter mentioned made after June 1, 1925, for refunding underlying bonds and for additions, betterments, and improvements, any such pledge to be in such ratio of bonds to obligations, and any such sale to be at such price or prices as the commission shall from time to time approve upon the application of the applicant.

7. Since March 18, 1925, Chicago, Milwaukee and St. Paul Railway Company has been, and still is, in receivership; it is without funds to meet its obligations and to make the expenditures for additions and betterments necessary to enable it properly to serve the public.

On November 22, 1926, its properties were sold pursuant to a final decree of the District Court of the United States for the Northern District of Illinois, Eastern Division, made and entered on April 26, 1926, in a certain consolidated cause in equity therein pending entitled "Guaranty Trust Company of New York and Merrel P. Callaway, as trustees, complainants, against Chicago, Milwaukee and St. Paul Railway Company et al., defendants, No. 4931," and in the constituent causes of said consolidated cause, and pursuant to final decrees of the District Courts of the United States for the District of Minnesota, Fourth Division, for the District of Montana, and for the Western District of Michigan, Northern Division, made and entered, respectively, on April 29, 1926, May 1, 1926, and May 6, 1926, in certain consolidated causes in equity pending in said courts and similarly entitled, the causes being respectively numbered 462, 173, and 304, and in the constituent causes of said consolidated
104 causes, and pursuant to a final decree of the District Court of the United States for the Southern District of New York, made and entered on June 21, 1926, in a certain cause in equity therein pending entitled "Binkley Coal Company, plaintiff, against Chicago, Milwaukee and St. Paul Railway Company, defendant, No. E. 31–294."

The following mortgages and indentures were foreclosed or enforced by said final decrees:

(a) The general and refunding mortgage of Chicago, Milwaukee and St. Paul Railway Company, dated November 1, 1913, made to Guaranty Trust Company of New York and Alexander J. Hemphill, as trustees (Merrel P. Callaway being successor individual trustee), and the indentures supplemental thereto;

(b) The first mortgage of Chicago, Milwaukee and Puget Sound Railway Company, dated January 1, 1909, made to United States Trust Company of New York and Edward W. Sheldon, as trustees, and the indentures supplemental thereto;

(c) The indenture, dated July 1, 1909, between Chicago, Milwaukee and St. Paul Railway Company and the Farmers' Loan and Trust Company, as trustee, under which were issued the twenty-five year four per cent gold bonds of 1909 of said railway company;

(d) The indenture, dated June 1, 1910, between Chicago, Milwaukee and St. Paul Railway Company and United States Mortgage and Trust Company and William Nelson Cromwell, as trustees, under which were issued the four per cent fifteen-year European loan of 1910 bonds of said railway company;

(e) The indenture, dated June 1, 1912, between Chicago,
105 Milwaukee and St. Paul Railway Company and United States Trust Company of New York, as trustee (Bankers Trust Company being successor trustee), under which were issued the 4½% convertible gold bonds of said railway company; and

(f) The indenture, dated December 1, 1915, between Chicago, Milwaukee and St. Paul Railway Company and United States Mortgage and Trust Company, as trustee, under which were issued the four per cent gold bonds of 1925 of said railway company.

The properties sold pursuant to said final decrees were, in so far, but only in so far, as the lien of any of the following instruments covers any of such property, directed to be sold subject to the lien of such instruments (including the charge which may arise from the subsequent issue of bonds authorized thereby):

(a) The mortgage or deed of trust dated June 10, 1880, executed by the Milwaukee and Northern Railroad Company to Jesse Hoyt and Allen S. Apgar, as trustees (the Farmers' Loan and Trust Company being successor trustee), and the indentures supplemental thereto, securing the 4½% first mortgage bonds of said railroad company, due June 1, 1910, extended to June 1, 1934;

(b) The mortgage or deed of trust dated February 11, 1884, executed by the Milwaukee and Northern Railroad Company to Samuel N. Hoyt and Allen S. Apgar, as trustees (the Farmers' Loan and Trust Company being successor trustee), and the indentures supplemental thereto, securing the 4½% consolidated mortgage bonds of said railroad company, due June 1, 1913, extended to June 1, 1934;

106 (c) The mortgage or deed of trust dated July 1, 1886, executed by Chicago, Milwaukee and St. Paul Railway Company to the Farmers' Loan and Trust Company, as trustee, securing the Chicago and Missouri River Division first mortgage bonds of said railway company, due July 1, 1926;

(d) The mortgage or deed of trust dated May 1, 1889, executed by Chicago, Milwaukee and St. Paul Railway Company to United States Trust Company of New York, as trustee, securing the general mortgage bonds of said railway company, due May 1, 1989;

(e) The mortgage or deed of trust dated December 2, 1901, executed by Bellingham Bay and British Columbia Railroad Company to Mercantile Trust Company of San Francisco, as trustee, securing the first mortgage 5% gold bonds of said railroad company, due December 1, 1932;

(f) The equipment trust agreement dated January 15, 1920, between Walker D. Hines, Director General of Railroads, Chicago, Mil-

waukee and St. Paul Railway Company, and Guaranty Trust Company of New York, trustee, securing equipment gold notes:

(g) The equipment trust agreement dated July 15, 1922, between John W. Taylor and L. K. Sillcox, vendors, Chicago, Milwaukee and St. Paul Railway Company, and Metropolitan Trust Company of the City of New York, trustee, and the lease dated July 15, 1922, between Chicago, Milwaukee and St. Paul Railway Company and Metropolitan Trust Company of the City of New York, securing equipment trust 5% gold certificates, Series A:

(h) The equipment trust agreement dated February 1, 1923,
107 between Granville H. Davis and Andrew S. Hannum, vendors, Chicago, Milwaukee and St. Paul Railway Company, and Commercial Trust Company of Philadelphia, trustee, and the lease dated February 1, 1923, between Chicago, Milwaukee and St. Paul Railway Company and Commercial Trust Company, as trustee, securing equipment trust 5% gold certificates, Series B:

(i) The equipment trust agreement dated April 1, 1923, between Andrew S. Hannum and Granville H. Davis, vendors, Chicago, Milwaukee and St. Paul Railway Company, and Bank of North America and Trust Company of Philadelphia, trustee, and the lease dated April 1, 1923, between Chicago, Milwaukee and St. Paul Railway Company and Bank of North America and Trust Company, as trustee, securing 5½% equipment trust certificates, Series C:

(j) The equipment trust agreement dated August 1, 1925, between Andrew S. Hannum and Granville H. Davis, vendors, H. E. Byram, Mark W. Potter, and Edward J. Brundage, as receivers of Chicago, Milwaukee and St. Paul Railway Company, and Bank of North America and Trust Company of Philadelphia, trustee, and the lease dated August 1, 1925, between H. E. Byram, Mark W. Potter, and Edward J. Brundage, as receivers of Chicago, Milwaukee and St. Paul Railway Company, and Bank of North America and Trust Company, as trustee, securing 5% equipment trust certificates, Series D.

Copies of said final decrees of said District Courts are filed herewith, marked "Schedule II (a), (b), (c), (d), and (e)" and made
a part hereof by reference thereto.

108 By said final decrees it was provided that no sale of any property under said final decrees to any purchaser purchasing pursuant to any plan and agreement of reorganization, should be confirmed if said District Court of the United States for the Northern District of Illinois, Eastern Division, should determine that the provisions of such plan and agreement, or any thereof, were inequitable or that said plan and agreement did not contain an equitable and timely offer of participation in the reorganization thereby proposed to all persons entitled thereto, and said District Court reserved exclusive jurisdiction to make such determination.

The purchasers at the sale held pursuant to the provisions of said final decrees, bid pursuant to the plan and agreement dated June 1, 1925, for the reorganization of Chicago, Milwaukee and St. Paul

Railway Company, as modified November 19, 1925, (said plan and agreement as so modified being hereinafter together called the reorganization plan). A copy of the reorganization plan is filed herewith, marked "Schedule III" and made a part hereof by reference thereto.

On January 19, 1927, said District Court of the United States for the Northern District of Illinois, Eastern Division, after hearing, entered a decree finding that the provisions of the reorganization plan are equitable and that the reorganization plan contains an equitable and timely offer of participation in the reorganization thereby proposed to all persons entitled thereto and confirming said sale, and directing the execution and delivery to the purchasers or their assigns of a deed or deeds, in form approved by the court, of the property sold at said sale. Subsequently said sale was also confirmed as to all lines of railroad and other property situated within the Eighth, Ninth, Sixth, and Second Judicial Circuits, respectively, by the said
District Courts of the United States for the District of Min-
109 nesota, Fourth Division, for the District of Montana, for the
Western District of Michigan, Northern Division, and for the Southern District of New York. Copies of said decrees confirming the sale and approving the form of special master's deed of said District Courts are filed herewith, marked "Schedule IV (a), (b), (c), (d), and (e)" and made a part hereof by reference thereto.

By an agreement dated April 11, 1927, there has been assigned to the applicant all the right, title, and interest of the purchasers in and to the property purchased by them at said sale, subject to the approval by the commission of the acquisition by the applicant of such property. A copy of said agreement is filed herewith, marked "Schedule V" and made a part hereof by reference thereto.

There is filed herewith, marked "Schedule VI" and made a part hereof by reference thereto, a statement of—

(A) The lines of railroad and the total mileage thereof which the applicant seeks permission to acquire;

(B) The lines of railroad and the total mileage thereof, an undivided half interest in which the applicant seeks permission to acquire, and in each case the name of the corporation owning the other undivided half interest thereof and the State under the laws of which such incorporation is incorporated;

(C) The lines of railroad and the total mileage thereof, a leasehold interest in which the applicant seeks permission to acquire, the name of the lessor corporation and the State under the laws of which the lessor corporation is incorporated, and the States in which such corporation is authorized to do business;

(D) The lines of railroad and the total mileage thereof, trackage
rights over which the applicant seeks permission to acquire,
110 the names of the corporations owning such lines of railroad
and the State under the laws of which each of such corporations is incorporated;

(E) The lines of railroad and the total mileage thereof owned, or trackage rights over which are owned, by corporations, stock of which the applicant seeks permission to acquire, the names of such corporations, the State under the laws of which each of such corporations is incorporated, the States in which each of such corporations is authorized to do business, the amount of stock of each of such corporations outstanding and the amount of stock of each which the applicant seeks permission to acquire.

There is filed herewith, marked "Schedule VII" and made a part hereof by reference thereto, a statement of the States, and of the counties within the States, in which are situated the lines of railroad which, or rights and interests in which, the applicant seeks permission to acquire, or which, or trackage rights over which, are owned by corporations stock of which the applicant seeks permission to acquire.

The applicant has no offices or directors in common with, and exercises no control over, any of the corporations referred to in Schedule VI or owning any of the lines of railroad referred to in said schedule.

The lease of the lines of railroad of Chicago, Terre Haute and Southeastern Railway Company to Chicago, Milwaukee and St. Paul Railway Company, and the purchase by Chicago, Milwaukee and St. Paul Railway Company of the stock of Chicago, Terre Haute and Southeastern Railway Company referred to in Schedule VI were approved by the commission on June 28, 1921, in Finance Docket No. 1383, 70 I. C. C. R. 20. For the terms and provisions of said lease reference is made to the record in said Finance Docket No. 1383.

111 The purchase by Chicago, Milwaukee and St. Paul Railway Company of the stock of Chicago, Milwaukee and Gary Railway Company referred to in Schedule VI was approved by the commission on February 11, 1922, in Finance Docket No. 2141, 71 I. C. C. R. 124. For the terms and conditions under which said stock was purchased reference is made to the record in said Finance Docket, No. 2141. Reference is also made to the tentative plan of the commission for the consolidation of railroads in Finance Docket No. 12964, 63 I. C. C. R. 455, at pages 462, 598, 599. Reference is also made to the report of the commission on the valuation of Chicago, Terre Haute and Southeastern Railway Company, dated June 19, 1925, in Valuation Docket No. 41, 97 I. C. C. R. 535, and to the report of the commission on the valuation of Chicago, Milwaukee and Gary Railway Company, dated June 11, 1926, in Valuation Docket No. 106, 114 I. C. C. R. 16.

There is filed herewith, marked "Schedule VIII" and made a part hereof by reference thereto, a transcript of certain testimony relative to Chicago, Terre Haute and Southeastern Railway Company and Chicago, Milwaukee and Gary Railway Company given at the hearings before the commission in "In re Investigation of Chicago, Milwaukee and St. Paul Railway Company," Docket No. 17021.

Said fifty-year five per cent mortgage bonds, five per cent convertible adjustment mortgage bonds, preferred stock, and common stock, which the applicant seeks permission to issue (other than said preferred stock and common stock to be issued in conversion of the convertible adjustment mortgage bonds), will be issued in respect of the acquisition by the applicant (directly or indirectly through stocks and bonds representative thereof) of said properties formerly of Chicago, Milwaukee and St. Paul Railway Company to be acquired by the applicant and otherwise for the considerations set forth in said agreement dated April 11, 1927, Schedule V hereto.

112 Said bonds and said preferred stock—i. e., said securities having a nominal or par value—will be issued at par.

The details of the arrangements which have been entered into in connection with the acquisition of said properties and the issue of said bonds and stocks and the applicant's general plan for financing the proposed purchase of the properties herein involved are as hereinabove set forth.

During the receivership the receivers have made, and so long as the receivership continues will continue to make, large capital expenditures out of income for refunding underlying bonds and for additions and betterments to the railroad. Said general mortgage five per cent gold bonds, Series D, which the applicant seeks permission to issue, are to be issued from time to time to reimburse the treasury of the property for all such expenditures of the receivers, not otherwise capitalized, made since June 1, 1925 (the date of said reorganization plan), or hereafter made prior to the termination of the receivership. On July 1, 1926, $3,083,000, principal amount, of bonds secured by the Chicago and Missouri River Division first mortgage of Chicago, Milwaukee and St. Paul Railway Company (which was included in the prior liens subject to which the properties of said railway company were directed by said final decrees to be sold) matured and were taken up by the receivers. The expenditures of the receivers for additions and betterments to the property, not otherwise capitalized, from June 1, 1925, to February 1, 1927, had aggregated $17,163,507. No contract, underwriting, or other arrangement has been made or proposed in connection with the disposition of any of said general mortgage five per cent gold bonds, Series D.

8. The foregoing facts are relied upon by the applicant to show that the proposed acquisition and operation by the applicant of said properties are—

113 (a) required by the present or future public convenience and necessity, and

(b) will be in the public interest;

and to show that the proposed issue by the applicant of said bonds and stocks and the proposed assumption by the applicant of said contracts and mortgages are—

(a) for some lawful object within the corporate purposes of the applicant and compatible with public interest, which is necessary and appropriate for and consistent with the proper performance by the applicant of service to the public as a common carrier and which will not impair its ability to perform that service, and

(b) are reasonably necessary and appropriate for such purposes.

9. The following papers are filed herewith and made a part hereof by reference thereto:

Schedule IX—a copy of the by-laws of the applicant certified by its secretary;

Schedule X—a certified copy of resolutions of the board of directors of the applicant authorizing the purchase of the lines of railroad, leasehold, and other rights and interests in lines of railroad, the stock of corporations owning lines of railroad, and other property and rights, formerly of Chicago, Milwaukee and St. Paul Railway Company;

Schedule XI—a certified copy of resolutions of the board of directors of the applicant authorizing the issue of said stocks and bonds to the amounts and for the purposes set forth in said agreement dated April 11, 1927, Schedule V hereto;

114 Schedule XII—a certified copy of a resolution of the board of directors of the applicant, held at 52 William Street, New York City, on April 9, 1927, authorizing the making and filing of this application, and designating John J. McCloy, president of the applicant, as the executive officer, to sign, verify, and file this application on behalf of the applicant;

Schedule XIII—the opinion of the attorneys for the applicant that the proposed acquisition by the applicant of said lines of railroad, leasehold, and other rights and interests in lines of railroad, and stock of corporations owning lines of railroad, and the operation of said lines of railroad, are—

(a) required by the present or future public convenience and necessity, and

(b) will be in the public interest, and

(c) will be legally authorized if approved by the commission;

and that the issue of said bonds and stocks and the assumption of said contracts and mortgages are—

(a) for some lawful object within the corporate purposes of the applicant and compatible with public interest, which is necessary and appropriate for and consistent with the proper performance by the applicant of service to the public as a common carrier and which will not impair its ability to perform that service, and

(b) are reasonably necessary and appropriate for such purposes, and

(c) will be legally authorized and valid if approved by the commission.

115 Schedule XIV—A map drawn to scale indicating the lines of railroad (a) which the applicant seeks permission to ac-

quire: (b) an undivided half interest in which the applicant seeks permission to acquire; (c) a leasehold interest in which the applicant seeks permission to acquire: (d) trackage rights over which the applicant seeks permission to acquire; and (e) which, or trackage rights over which, are owned by corporations, other than terminal companies, stock of which the applicant seeks permission to acquire;

Schedule XV—A proof of the proposed fifty-year mortgage of the applicant dated as of February 2, 1925, in which is set out the proposed form of the fifty-year mortgage bonds and scrip certificates;

Schedule XVI.—A proof of the proposed adjustment mortgage of the applicant, dated as of February 2, 1925, in which is set out the proposed form of the definitive convertible adjustment mortgage bonds and scrip certificates;

Schedule XVII—A proof of the proposed first and refunding mortgage of the applicant dated as of February 2, 1925, under which no bonds are to be presently issued;

Schedule XVIII (a) and (b)—Proposed forms of the temporary certificates for preferred stock and common stock, specimens of which are not available;

Schedule XIX—A copy of the applicant's balance sheet as of January 31, 1927, as it would have been if the reorganization plan had been consummated on said date.

A copy of the above-mentioned general mortgage, dated May 1, 1889, of Chicago, Milwaukee and St. Paul Railway Company was filed in Finance Docket No. 944.

Wherefore the applicant requests that the commission—

116 (a) Approve and authorize the acquisition by the applicant of said lines of railroad, leasehold, and other rights and interests in lines of railroad, and stocks of corporations owning lines of railroad as aforesaid, in each case with their appurtenances;

(b) Issue a certificate that the present or future public convenience and necessity require, or will require, the operation by the applicant of said lines of railroad and appurtenances;

(c) Authorize the assumption by the applicant of (1) any lease or any traffic, trackage, terminal, crossing, or operating agreement, or other contract not fully performed, made by Chicago, Milwaukee and St. Paul Railway Company, or any predecessor company, or by the receivers hereinbefore mentioned, including any obligations, as lessor, lessee, guarantor, indorser, surety, or otherwise, in respect of the securities of any other person, natural or artificial (including any contract which the applicant may be entitled under the provisions of the final decrees hereinbefore mentioned to disavow by election made within one year from the date of the delivery of the deeds or other instruments of conveyance of the property sold under said final decrees), and (2) any mortgage, not foreclosed by said

final decrees, upon the property sold under said final decrees, or any bonds issued under any such mortgage; and

(d) Authorize (A) the issue by the applicant, in temporary or in definitive form, and, if in temporary form, the issue of securities of like character in definitive form in exchange therefor, of—

117 $106,395,096, principal amount, of fifty-year five per cent mortgage bonds, Series A, Series B, or Series C, of any series, one or more (and in the first instance, in respect of any thereof, an equal principal amount of scrip certificates) $45,718,424, principal amount, of said bonds to bear interest from February 1, 1925, and $60,676,672, principal amount, of said bonds to bear interest from the interest payment date next preceding their issue;

$182,873,693, principal amount, of five per cent convertible adjustment mortgage bonds, Series A, Series B, or Series C, of any series, one or more (and in the first instance, in respect of any thereof, an equal principal amount of scrip certificates), interest on said bonds to be computed from February 1, 1925;

$118,845,800, par amount, of preferred stock, together with such additional par amount of preferred stock as may be required to provide for the settlement and discharge of unsecured claims now or hereafter arising against Chicago, Milwaukee and St. Paul Railway Company, at the rate of one share of such preferred stock for each $100, face amount, of such claims as finally allowed and established; and

1,174,060 shares of common stock, without nominal or par value; and the issue from time to time of such additional amounts of preferred stock up to $91,436,900, par amount, and of such additional amounts of common stock up to 914,369 shares as may be necessary to effect the conversion of said convertible adjustment mortgage

118 bonds at the rate aforesaid; and (B) the issue by the applicant, in temporary or definitive form, and if in temporary form the issue of securities of like character in definitive form in exchange therefor, and the sale or pledge thereof by the applicant for its corporate purposes, of the general mortgage five per cent gold bonds, Series D, secured under the general mortgage of Chicago, Milwaukee and St. Paul Railway Company, dated May 1, 1889, at any time in the treasury of the applicant, up to a principal amount equal to the amount of the expenditures, not otherwise capitalized, of the receivers hereinabove mentioned made after June 1, 1925, for refunding underlying bonds and for additions, betterments, and improvements; any such pledge to be in such ratio of bonds to obligations and any such sale to be at such price or prices as the commission shall from time to time approve upon the application of the applicant.

CHICAGO, MILWAUKEE, ST. PAUL AND
PACIFIC RAILROAD COMPANY,
By JOHN J. MCCLOY, *President.*

Dated April 11, 1927.

119 STATE OF NEW YORK,
County of New York, ss:

John J. McCloy, being duly sworn, deposes and says that he is president of Chicago, Milwaukee, St. Paul and Pacific Railroad Company; that, by resolution adopted by the board of directors of said company on April 9, 1927, he was duly authorized to sign, verify, and file the foregoing application on behalf of said company; that he has read the foregoing application and is familiar with the matters therein set forth and that the matters therein set forth are true to the best of his knowledge and belief.

JOHN J. MCCLOY.

Subscribed and sworn to before me this 11th day of April, 1927.

[NOTARIAL SEAL.] FREDERICK N. EDWARDS,
Notary Public.

Notary public, New York County; cert. filed in Kings, Queens & Dutchess Cos.: New York Co. Clerk's No. 112, Reg. No. 8105; Queens County clerk's No. 705; Kings Co. clerk's No. 54, Reg. No. 8065. Commission expires March 30, 1928.

120 *Schedule X*

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

(Excerpts from minutes of meeting of board of directors held April 9, 1927)

"Whereas Chicago, Milwaukee and St. Paul Railway Company in the exercise of its corporate powers constructed and in other ways acquired various lines of railroad, and interests therein, and stocks of corporations owning lines of railroad, situated in the States of Illinois, Indiana, Iowa, Idaho, Michigan, Minnesota, Missouri, Montana, North Dakota, South Dakota, Wisconsin, and Washington; and

"Whereas in pursuance of the final decree made and entered April 26, 1926, by the District Court of the United States for the Northern District of Illinois, Eastern Division, in the cause therein pending, entitled 'Guaranty Trust Company of New York and Merrel P. Callaway, as trustees, complainants, against Chicago, Milwaukee and St. Paul Railway Company et al., defendants, in equity, consolidated cause No. 4931,' and in pursuance of decrees confirming said final decree, of the District Courts of the United States for the District of Montana, the District of Minnesota, Fourth Division, the Western District of Michigan, Northern Division, and the Southern District of New York, said lines of railroad, and interests therein, and stocks of railroad companies belonging to said Chicago, Milwaukee and St. Paul Railway Company and the franchises, equipment, and other property appurtenant thereto, together with all

other property of said railway company, were sold at public sale subject to confirmation by said courts; and

121 "Whereas Robert T. Swaine and Donald C. Swatland, in pursuance of the plan and agreement dated June 1, 1925, for the reorganization of said Chicago, Milwaukee and St. Paul Railway Company, as modified November 19, 1925, bid for all of said property at said sale and were the successful bidders therefor; and

"Whereas Robert T. Swaine and Donald C. Swatland have heretofore assigned their successful bid at said sale to Chicago, Milwaukee and Pacific Railroad Company, a Delaware corporation; and

"Whereas by decrees entered by said courts in said causes said sale has been approved, confirmed, and made final and absolute, subject to all the terms and conditions of said decrees of sale and of said decrees confirming sale; and

"Whereas in pursuance of said plan and agreement this company has been organized under the laws of the State of Wisconsin for the purpose, among other things, of acquiring the property formerly of Chicago, Milwaukee and St. Paul Railway Company, and of acquiring, constructing, maintaining, and operating the same with the franchises pertaining thereto; and

"Whereas it is advisable that this company acquire said property upon such terms and conditions provided in the form of agreement which has been submitted to this meeting, and that this company enter into an agreement substantially in said form:

"Resolved that this company acquire all the right, title, and interest of said Robert T. Swaine and Donald C. Swatland and

122 said Chicago, Milwaukee and Pacific Railroad Company in and to all said property upon the terms and conditions set forth in said form of agreement, subject to the approval of any public authorities having jurisdiction in the premises.

"Resolved that upon the approval of such acquisition by any public authorities having jurisdiction in the premises this company acquire said lines of railroad and interests therein and stocks of railroad companies, together with the franchises, equipment, and other property appurtenant thereto, and all other property mentioned in said form of agreement upon the terms and conditions set forth in said form of agreement.

"Resolved that upon the approval of the issue thereof by any public authorities having jurisdiction in the premises this company create the mortgages and issue the stock and bonds provided to be created and issued by this company as provided in said form of agreement, upon the terms and conditions set forth in said form of agreement.

"Resolved that this company enter into an agreement with Chicago, Milwaukee and Pacific Railroad Company, Robert T. Swaine and Donald C. Swatland, and Messrs. Kuhn, Loeb & Co. and the

National City Company, as reorganization managers under the plan and agreement, dated June 1, 1925, for the reorganization of Chicago, Milwaukee and St. Paul Railway Company, as modified November 19, 1925, substantially in the form which has been submitted to this meeting, and that the proper officers of this company be, and they hereby are, authorized and directed in the name and on behalf of this company to execute under its corporate seal
123 and to deliver to said Chicago, Milwaukee and Pacific Railroad Company, to said Robert T. Swaine and Donald C. Swatland, and to said reorganization managers an agreement substantially in said form."

I, Gorden E. Youngman, secretary of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereby certify that the foregoing is a full, true, and complete copy of preambles and resolutions unanimously adopted at a special meeting of the board of directors of said company, held April 9, 1927, at which meeting all the members of said board were present.

In witness whereof I have hereunto set my hand and affixed the seal of said company this 11th day of April, 1927.

[CORPORATE SEAL] GORDON E. YOUNGMAN,
Secretary.

Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Incorporated, 1927, Wisconsin

124 *Schedule XI*

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

(Excerpts from minutes of meeting of board of directors held April 9, 1927)

"Resolved that upon the authorization and approval by the Interstate Commerce Commission of the acquisition by the company of the lines of railroad and other property, the acquisition whereof has been authorized at this meeting, and upon the approval by the Interstate Commerce Commission of the issue by this company of the bonds and stocks to be issued by the company under the agreement between this company, Chicago, Milwaukee and Pacific Railroad Company, Robert T. Swaine and Donald C. Swatland, and Kuhn, Loeb & Co. and the National City Company as reorganization managers, this company, in addition to any other sums to be paid by it and obligations incurred by it under said agreement, issue and deliver, in respect of the acquisition of and in consideration for, the property, rights, and securities, to be acquired by it pursuant to said agreement, at such time or times as Kuhn, Loeb & Co. and the National City Company, reorganization managers under said plan and agreement dated June 1, 1925, for the reorganization of Chicago, Milwaukee and St. Paul Railway Company, as modified November 19, 1925, shall request, and to such persons, firms, and

corporations as said Kuhn, Loeb & Co. and the National City Company may from time to time designate:

"(a) $106,395,096, principal amount, of fifty year five per
125 cent mortgage bonds of the company, Series A, Series B, or Series C, of any series, one or more (and in the first instance, in respect of any thereof, an equal principal amount of script certificates), as Kuhn, Loeb & Co. and the National City Company, as such reorganization managers, may request, $45,718,424, principal amount, of said bonds to bear interest from February 1, 1925, and $60,676,672, principal amount, of said bonds to bear interest from the interest payment date next preceding their issue;

"(b) $182,873,693, principal amount, of five per cent convertible adjustment mortgage bonds of the company, Series A, Series B, or Series C, of any series, one or more (and in the first instance, in respect of any thereof, an equal principal amount of scrip certificates), as Kuhn, Loeb & Co. and the National City Company, as such reorganization managers, may request, interest on which shall be computed from February 1, 1925;

"(c) $118,845,800, par value, of the preferred stock of the company, consisting of $1,188,458 shares of the par value of $100 each, together with such additional par amount of said preferred stock as may be required to provide for the settlement and discharge of unsecured claims now or hereafter arising against Chicago, Milwaukee and St. Paul Railway Company, at the rate of one share of preferred stock for each $100 face amount of such claims as finally allowed and established; and

"(d) 1,174,060 shares of the common stock of the company without nominal or par value.

126 "Resolved that upon the surrender to this company of any of the five per cent convertible adjustment mortgage bonds for conversion into preferred stock and common stock of this company, in accordance with the terms of said bonds and of said adjustment mortgage, the proper officers of this company be, and they hereby are, authorized to execute and deliver, in exchange for said five per cent convertible adjustment mortgage bonds so surrendered, preferred stock and common stock of this company at the rate of five shares of preferred stock and five shares of common stock for each $1,000 bond with appropriate adjustment of interest and dividends as provided in the adjustment mortgage."

I, Gordon E. Youngman, secretary of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereby certify that the foregoing is a full, true, and complete copy of resolutions unanimously adopted at a special meeting of the board of directors of said company, held April 9, 1927, at which meeting all the members of said board were present.

In witness whereof I have hereunto set my hand and affixed the seal of said company this 11th day of April, 1927.

[CORPORATE SEAL.] GORDON E. YOUNGMAN,
Secretary.

Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Incorporated, 1927, Wisconsin

127 *Exhibit D to petition*

F-3053.

Interstate Commerce Commission

Finance Docket No. 6240

CHICAGO, MILWAUKEE & ST. PAUL REORGANIZATION

Submitted September 29, 1927. Decided January 4, 1928

Certificate and order issued upon certain terms and conditions, authorizing:

1. Acquisition and operation by the Chicago, Milwaukee, St. Paul & Pacific Railroad Company of the lines of railroad formerly owned and/or operated by the Chicago, Milwaukee & St. Paul Railway Company.
2. Acquisition by the Chicago, Milwaukee, St. Paul & Pacific Railroad Company of control (a) of the Chicago, Terre Haute & Southeastern Railway Company by purchase of capital stock and by lease, and (b) of the Chicago, Milwaukee & Gary Railway Company, Davenport, Rock Island & Northwestern Railway Company, White Sulphur Springs & Yellowstone Park Railway Company, Indiana Harbor Belt Railroad Company, Minnesota Transfer Railway Company, Minneapolis Eastern Railway Company, Chicago Union Station Company, St. Paul Union Depot Company, Kansas City Terminal Railway Company, and Des Moines Union Railway Company by purchase of all or fractions of their capital stock.
3. Issue by the Chicago, Milwaukee, St. Paul & Pacific Railroad Company of (a) 1,174,060 shares of common stock without nominal or par value, and $119,845,800 of preferred stock, consisting of 1,198,458 shares of the par value of $100 each, and from time to time such additional amounts of stock up to 914,369 shares of common and $91,436,900 of preferred as necessary to convert the 5 per cent convertible adjustment-mortgage bonds into stock; (b) $106,395,096 of 50-year 5 per cent mortgage bonds, series A, B, or C; (c) $182,873,693 of 5 per cent convertible adjustment-mortgage bonds, series A, B, or C; and assumption by the Chicago, Milwaukee, St. Paul & Pacific Railroad Company of obligation and liability in respect of the securities listed in Appendixes A and B of this report.
4. That part of the application requesting authority to issue general-mortgage 5 per cent gold bonds, series D, denied, without prejudice.

Robert T. Swaine, Donald C. Swatland, and Cravath, Henderson & de Gersdorff for applicant.

Guy Cary, Sanford H. E. Freund, and Shearman & Sterling for bondholders' protective committee; George Welwood Murray, Pike

B. Waldrock, and Murray, Aldrich & Roberts for preferred-stockholders' committee; Joseph P. Cotton, Wilton Lloyd-Smith, and Sprague, Merle-Smith & Smart, and Rosenthal, Hamill & Worsmer Church Osborn, Van Santvoord Merle-Smith, Talbert W. Sprague, Sprague, Merle-Smith & Smart, and Rosenthal, Hamill & Worsmer for Iselin committee; Emory R. Buckner, Eliha Root, jr., and Root, Clark, Buckner, Howland & Ballantine for Roosevelt bondholders' protective committee.

128 O. W. Dynes for receivers of Chicago, Milwaukee & St. Paul Railway Company.

Edwin S. S. Sunderland and Davis, Polk, Wardwell, Gardiner & Reed for Guaranty Trust Company of New York, and Merrel P. Callaway as trustees of general and refunding mortgage.

Nathan L. Miller, Henry W. Anderson, Gerard C. Henderson, Thomas B. Gay, and Irvin G. Craig for bondholders' defense committee, intervener.

John W. Reynolds, attorney general, and Daniel H. Grady for State of Wisconsin.

Report of the commission

By the commission:

The Chicago, Milwaukee, St. Paul & Pacific Railroad Company, hereinafter called the applicant, a corporation organized for the purpose of engaging in transportation by railroad subject to the interstate commerce act, by its application filed on April 12, 1927, has applied (1) under paragraph (18) of section 1 and other applicable provisions of the act for a certificate that the present and future public convenience and necessity require the acquisition and operation by it of the lines of railroad formerly of the Chicago, Milwaukee & St. Paul Railway Company, hereinafter called the St. Paul; (2) under paragraph (2) of section 5 of the act to acquire control either solely or jointly, as such control now exists, by acquisition of the capital stock and/or by lease of the carriers now controlled by the St. Paul solely or jointly with other carriers, and to operate over the lines of such carriers, or over tracks operated by them, under trackage rights; and (3) under section 20a of the act for authority (a) to issue $106,395,096 of 50-year 5 per cent mortgage bonds, series A, B, or C, of any series, one or more, $182,873,693 of 5 per cent convertible adjustment-mortgage bonds, series A, B, or C, of any series, one or more, $118,845,800 of preferred stock and such additional amount thereof as may be required to settle unsecured claims, 1,174,060 shares of common stock without nominal or par value, and from time to time additional amounts of preferred stock up to $91,436,900 and up to 914,369 shares of common stock as may be necessary to effect the conversion of the convertible adjustment-mortgage bonds, (b) to assume obligation and liability in respect of the securities shown in Appendixes A and B; and (c) to issue St. Paul general-mortgage 5 per cent gold bonds, series D, secured under the general mortgage dated May 1, 1889, at any time in the treasury

of the applicant, equal to the amount of expenditures not otherwise capitalized made by the receivers hereinafter mentioned after
129 June 1, 1925, for refunding underlying bonds and for additions and betterments.

An intervening petition opposing the application was filed on behalf of a bondholders' defense committee consisting of Edwin C. Jameson, chairman, Louis V. Bright, Joseph S. Frelinghuysen, Leroy W. Baldwin, and Thomas Read, hereinafter called the Jameson committee. A hearing was had beginning July 6, 1927. A committee representing certain holders of preferred and common stock known as the Iselin committee filed an intervening petition and supported the application. At the hearing an appearance was entered in behalf of the State of Wisconsin opposing the application because of the terms of certain existing contracts for the purchase of electric power. No other formal objections to the granting of the application have been presented to us. Briefs were filed and oral argument had.

The lines of railroad constituting the St. Paul system are located in the States of Idaho, Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, South Dakato, Washington, and Wisconsin. The total mileage is approximately 11,200 miles, consisting of 10,230.84 miles owned, 361.31 miles held under lease, and 608.41 miles operated under trackage rights. Included in the total mileage owned are 109.6 miles in which an undivided one-half interest is owned by other companies. A detailed description of such lines is contained in subdivisions A, B, C, and D of Schedule VI of the application.

The properties of the St. Paul were placed in receivership on March 18, 1925, in a creditor's suit in the District Court of the United States for the Northern District of Illinois, Eastern Division, entitled Binkley Coal Company v. Chicago, Milwaukee & St. Paul Railway Company, No. 4696. H. E. Byram, Mark W. Potter, and Edward J. Brundage were appointed receivers. On June 18, 1925, the Guaranty Trust Company of New York and Merrel P. Callaway, as trustees under the St. Paul's general and refunding mortgage dated November 1, 1913, filed a suit in the same court to foreclose the general and refunding mortgage. A suit was subsequently filed in that court by the United States Trust Company of New York and Edward W. Sheldon, as trustees under the first mortgage, dated January 1, 1909, of the Chicago, Milwaukee & Puget Sound Railway Company, hereinafter called the C., M. & P. S. Ancillary proceedings in these several suits were had in other district courts of the United States as necessary. As to the transactions and causes precipitating the St. Paul receivership, reference is made to our report in Investigation of Chicago, Milwaukee & St. Paul Railway Company, 131 I. C. C. 615.

130 By decree of foreclosure and sale entered April 26, 1926, in the District Court of the United States for the Northern District of Illinois, Eastern Division, in the several suits which were

entitled Guaranty Trust Company of New York, and Merrel P. Callaway v. Chicago, Milwaukee & St. Paul Railway Company et al., consolidated causes in Equity No. 4931, and pursuant to certain ancillary decrees of certain district courts of the United States, both mortgages were foreclosed and the properties were sold on November 22, 1926, to Robert T. Swaine and Donald C. Swatland for $140,000,000, which sale was confirmed by decree entered January 19, 1927. The properties were sold subject to the lien of certain mortgages and equipment trusts under which there were outstanding or have subsequently been issued an aggregate amount of $163,398,460 of securities, as detailed in Appendix A.

There have been issued under the St. Paul's general and refunding mortgage $55,000,000 of series A 4½ per cent bonds, $29,141,300 of series B 5 per cent convertible bonds, and $189,447,500 of series Z 6 per cent bonds. Of these bonds $11,911,000 of series A and $72,230,300 of series Z have been canceled, $11,500 of series B are held in the St. Paul's insurance fund, and $44,388,200 of series Z are held in its treasury. Of the bonds issued, it is shown that entitled to the lien of the general and refunding mortgage there are $43,089,000 of series A and $29,129,800 of series B outstanding in the hands of the public, and $72,829,000 of series Z held by the Secretary of the Treasury of the United States as security for notes given by the St. Paul to evidence its indebtedness to the United States.

Prior to the making of the general and refunding mortgage there had been issued three lots of unsecured bonds which, by the terms of the indentures under which they were issued, were to be secured by any mortgage subsequently placed upon the properties and to be on an equality with any bonds issued thereunder. The three lots of bonds mentioned consisted of (1) 25-year 4 per cent gold bonds of 1909 issued under an indenture dated July 1, 1909, to the Farmers' Loan & Trust Company, under which a total of $33,369,000 was issued, of which $83,000 is held in the St. Paul's insurance fund and $33,286,000 is outstanding in the hands of the public; (2) 4 per cent 15-year European loan of 1910 bonds issued under an indenture dated June 1, 1910, to the United States Mortgage & Trust Company, under which were issued bonds to a total of 250,000,000 French francs, of which 61,396,500 francs, equaling $11,807,276.03 at the fixed rate of exchange provided in the aforesaid indenture and the exchange rate on June 1, 1925, are outstanding, and the remainder pledged under the indenture of December 1, 1915,
131 hereinafter mentioned; and (3) 4½ per cent convertible gold bonds issued under an indenture dated June 1, 1912, to the United States Trust Company, under which was issued a total of $50,000,000 of bonds, of which $19,200 are held in the St. Paul's insurance fund, and $49,980,800 are outstanding.

Under date of December 1, 1915, the St. Paul made an indenture to the United States Mortgage & Trust Company providing for an

issue of 4 per cent gold bonds of 1925, to be secured by pledge with the trustee of 4 per cent 15-year European loan of 1910 bonds. There were issued under this indenture $36,345,139.24 of bonds, of which $1,244,981 is held in the St. Paul's insurance fund, $158.24 of scrip is held in its treasury, and $35,100,000 is outstanding in the hands of the public.

Under the decree of foreclosure all of the above-mentioned bonds outstanding, whether issued under the general and refunding mortgage, or under the several indentures stated and secured by the general and refunding mortgage, were adjudged to be equally and ratably secured thereby. All such bonds will be hereinafter referred to collectively as the general and refunding bonds.

Under date of January 1, 1909, the C., M. & P. S. made a mortgage to the United States Trust Company of New York and Edward W. Sheldon, as trustees, to secure an issue of first-mortgage bonds. Under that mortgage a total of $181,664,500 of bonds has been issued, of which $26,175,000 is outstanding in the hands of the public, $1,000,000 is held in the St. Paul's insurance fund, and $154,489,500 is pledged under the general and refunding mortgage. The properties of the C., M. & P. S. were acquired by the St. Paul in 1912 and constitute a part of its system.

The decree of foreclosure shows that at the date of decree there were due in respect of the general and refunding bonds and the C., M. & P. S. bonds the following amounts:

Series-A 4½ per cent general and refunding bonds:	
Interest due April 1, 1925, on $43,089,000 principal outstanding	$969,502.50
Interest thereon from April 1, 1925, at 4½ per cent to date of decree	46,657.31
Interest due October 1, 1925	969,502.50
Interest thereon from October 1, 1925, at 4½ per cent to date of decree	24,843.50
Interest due April 1, 1926	969,502.50
Interest thereon from April 1, 1926, at 4½ per cent to date of decree	3,029.69
Interest due and unpaid prior to default in interest on April, 1, 1925	12,600.00
Total	2,995,638.00
Series-B 5 per cent general and refunding bonds:	
Interest due August 1, 1925, on $29,129,800 principal outstanding	728,245.00
Interest thereon from August 1, 1925, at 5 per cent to date of decree	26,803.47
Interest due February 1, 1926	728,245.00
Interest thereon from February 1,1926, at 5 per cent to date of decree	8,597.34
Interest due and unpaid prior to default in interest on August 1, 1925, exclusive of interest on bonds in insurance fund	38,335.00
Total	1,530,225.81

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Twenty-five year 4 per cent gold bonds of 1909:	
Interest due July 1, 1925, on $33,286,000 principal outstanding	665,729.00
Interest thereon from July 1, 1925, at 4 per cent to date of decree	21,820.82
Interest due January 1, 1926	665,720.00
Interest thereon from January 1, 1926, at 4 per cent to date of decree	8,506.42
Interest due and unpaid prior to default in interest on July 1, 1925, exclusive of interest on bonds in insurance fund	9,340.00
Total	1,371,107.24
Four per cent 15-year European loan of 1910 bonds:	
Principal of 61,396,500 French francs at the rate of exchange on June 1, 1925, equivalent to	11,807,276.03
Interest due June 1, 1925	235,722.59
interest thereon from June 1, 1925, at 4 per cent to date of decree	8,512.21
Interest on principal from June 1, 1925, to date of decree at 4 per cent	496,373.86
Interest due and unpaid prior to default in interest on June 1, 1925, exclusive of interest on pledged bonds and bonds in the treasury	70,175.62
Total	12,548,060.31
Four per cent gold bonds of 1925:	
Principal	35,100,000.00
Interest due June 1, 1925	702,000.00
Interest thereon from June 1, 1925, to date of decree at 4 per cent	25,350.00
Interest on principal from June 1, 1925, to date of decree	1,267,500.00
Interest due and unpaid prior to default in interest on June 1, 1925, exclusive of interest on bonds in the treasury and in the insurance fund	9,140.00
Total	37,103,990.00
133 Four and one-half per cent convertible gold bonds:	
Interest due June 1, 1925, on $49,980,800 principal outstanding	1,124,568.00
Interest thereon from June 1, 1925, to date of decree at 4½ per cent	45,685.58
Interest due December 1, 1925	1,124,568.00
Interest thereon from December 1, 1925, to date of decree at 4½ per cent	20,382.80
Interest due and unpaid prior to default in interest on June 1, 1925, exclusive of interest on bonds in insurance fund	28,812.41
Total	2,344,016.79
C., M. & P. S. bonds:	
Interest due July 1, 1925, on $180,664,500 principal outstanding	3,613,290.00
Interest thereon from July 1, 1925, to date of decree at 4 per cent	118,435.62
Interest due January 1, 1926	3,613,290.00
Interest thereon from January 1, 1926, to date of decree at 4 per cent	46,169.82
Interest due and unpaid prior to default in interest on July 1, 1925	18,900.00
Total	7,410,085.44
Grand total	65,303,123.59

Coincidently with the receivership, committees were organized to represent the interests of the various classes of security holders affected thereby. Three committees were formed, one known as the bondholders' protective committee, representing the holders of general and refunding bonds and C., M. & P. S. bonds, one representing the holders of preferred stock, and one representing the holders of common stock. After the promulgation of the plan and agreement for the reorganization of the St. Paul hereinafter described, three other committees were formed, being known as the Roosevelt and Jameson committees, representing bondholders, and the Iselin committee, representing certain holders of preferred and common stock. These latter committees opposed the plan and agreement as first presented, but after certain modifications had been made therein the Roosevelt and Iselin committees withdrew their opposition and gave their support to the plan, but the Jameson committee has continued in its objections.

Kuhn, Loeb & Company and the National City Company were the banking houses through which were distributed to the public the bonds now in default. It is represented that because of such relationship they undertook the responsibility of acting as reorganization managers in the formation of a plan for the St. Paul reorganization. Under date of June 1, 1925, the reorganization managers announced a plan and agreement of reorganization
134 which by notice dated October 9, 1925, was declared effective.

Because of the objections of certain committees of security holders, as above indicated, the plan was modified under date of November 19, 1925. Hereinafter the plan and agreement of June 1, 1925, as modified, will be referred to as the plan. The various committees representing the several classes of bonds and stocks involved, except the Jameson committee, have given the plan their approval, and the record shows that as of June 30, 1927, the amounts of bonds and stocks deposited and bound by the plan were as follows:

Security	Face amount outstanding	Face amount deposited	Amount outstanding
Stocks:			
Common stock	$117,406,000	$88,648,300	Per cent 75.5
Preferred stock	115,845,800	84,627,400	73.1
Total stock	233,251,800		
Bonds:			
Bonds due 1934	33,286,000	30,538,000	91.1
Bonds due 1932	49,980,800	42,052,500	84.1
Gold bonds due 1925	35,100,000	26,708,000	76.1
European loan bonds	11,831,515	10,464,258	88.4
Refunding bonds A	43,089,000	38,669,000	89.7
Refunding bonds B	29,129,800	24,103,800	81.4
Total refunding bonds	202,417,115	172,535,558	85.2
C., M. & P. S. bonds	26,175,000	24,730,000	94.1
Total all bonds	228,592,115	197,265,558	86.3

The plan contemplated the organization of a new company the applicant herein, to acquire all the properties formerly belonging to the St. Paul and to issue for that purpose its securities against the transfer to it of such properties and certain other assets. As has been stated, Robert T. Swaine and Donald C. Swatland purchased the properties at the foreclosure sale, and under date of April 11, 1927, entered into an agreement with the applicant and certain other parties named therein whereby the purchasers assigned and transferred to the applicant all of their right, title, and interest in and to all the property purchased by them upon the consideration, in brief, that the applicant fulfill all of the obligations imposed upon them by the decree confirming the sale, that the applicant issue and deliver to the reorganization managers the new securities provided for in the plan, and that the reorganization managers distribute such securities to those entitled to receive them, and assign to the applicant all securities deposited under the plan, together with certain notes to the United States Government amounting to $55,000,000, and all claims of general creditors. The details are given in the agreement, a copy of which is filed with the application.

Under the plan all general and refunding bonds and C., M. & P. S. bonds are to be accorded equal treatment. For each $1,000
135 bond deposited with all coupons maturing after February 1, 1925, the depositor will be entitled to receive $200 of new 50-year 5 per cent mortgage gold bonds and $800 of 5 per cent convertible adjustment-mortgage gold bonds. No bonds are to be issued in respect of the unpaid interest, as the new bonds are to bear interest from February 1, 1925, and there is to be paid in cash all interest due and unpaid prior to the dates of default in interest, and also certain cash adjustments are to be made necessary to adjust to February 1, 1925, the interest on the several issues of bonds involved. Provision is made for the liquidation of the St. Paul's indebtedness to the United States Government amounting to $55,000,000, which is evidenced by 6 per cent notes in the amounts of $25,000,000, $10,000,000, and $20,000,000, respectively, and collaterally secured by the pledge of bonds. The note for $20,000,000 was given to the Director General of Railroads, as agent, in respect of matters pertaining to the Federal control period. The two notes aggregating $35,000,000, were given for loans to the St. Paul under section 210 of the transportation act, 1920, as amended. After negotiations with the Secretary of the Treasury and the Director General of Railroads, as agent, by the reorganization managers, members of various protective committees, and their counsel, arrangements were made to pay the loan under section 210 in full, to pay $17,000,000 of the indebtedness to the Director General of Railroads, as agent, and to issue $3,000,000 of preferred stock for the remainder. Accordingly, the plan provides for liquidating the indebtedness to the United States by paying $52,000,000 cash and by issuing $3,000,000 of preferred stock.

To raise the new money deemed necessary to effect the reorganization, comprising estimates of $52,000,000 for the Government notes, $1,544,325 for interest in respect of bonds deposited under the plan, and $16,488,223 for additions and betterments, equipment, working capital, and expenses of receivership and reorganization, a total of $70,032,548, the stockholders participating in the plan will be required to pay an assessment of $28 a share on the preferred stock and $32 a share on the common stock. For such payments the stockholders are to receive new 50-year 5 per cent mortgage gold bonds to the principal amount of $24 for each share of preferred stock and $28 for each share of common stock, and in addition there is to be issued to them one share of new stock of the class on which the assessment was paid. To the extent of $4 a share payment no new securities are to be issued. The unpaid claims of general creditors, estimated to be about $1,000,000, are to be settled by the issue of new preferred stock.

The applicant proposes to make three new mortgages, each to be secured by liens upon all of its road and assets. One, to be
136 dated February 2, 1925, to the United States Mortgage & Trust Company and Calvert Brewer, as trustees, is to be called the first and refunding mortgage. This mortgage is to be superior in lien to all other mortgages, except the mortgages securing the undisturbed bonds, and will provide that bonds may be issued thereunder to an aggregate amount not exceeding twice the value of the then outstanding capital stock of the applicant. The mortgage is designed to provide the applicant with the means of refunding underlying bonds and of financing its future capital requirements, and no bonds are to be issued presently under it.

Next in the strata of mortgage liens is to be the new 50-year 5 per cent mortgage to be made by the applicant under date of February 2, 1925, to the Guaranty Trust Company of New York and Merrel P. Callaway, as trustees. Under it a total of $106,395,096 of 50-year 5 per cent mortgage bonds may be issued. All of the bonds authorized are to be delivered to the reorganization managers in accordance with the plan. The bonds are to be dated as of February 2, 1925, to bear interest at the rate of 5 per cent per annum from February 1, 1925, in respect of $45,718,424 of such bonds, and from the interest date next preceding their issue in respect of $60,676,672 of such bonds, payable semiannually on February 1, and August 1 in each year, to be redeemable other than for the sinking fund on any interest date to and including February 1, 1970, at 105 and accrued interest, and thereafter at a premium of one-half of 1 per cent for each six months from the date of redemption to the date of maturity, and to mature February 1, 1975. The bonds may be issued in series.

The series A bonds are to be payable in dollars and may be issued in the denominations of $100, $500, and $1,000 for the coupon bonds and in the denominations of $500 and $1,000 and multiples of $1,000 for the registered bonds. The series B bonds are to be payable in

French francs and are to be issued in the denominations of 100 and 500 francs. The series C bonds are to be payable in sterling money of Great Britain and are to be issued in denominations of £3:19:2 and £19:15:6. Scrip certificates for the series A bonds for fractions of bonds less than $100 may also be issued. Article five of the mortgage makes provision for yearly sinking-fund payments beginning with the year 1936, if the net income for the year ending December 31, 1935, is sufficient therefor. Such payments are to be cumulative and in the sum of $225,000, but no such payments will be required until the applicant has paid or set apart for payment the full cumulative interest on the adjustment bonds and the full cumulative sinking-fund payments provided for in the adjustment mortgage.

137 The last mortgage provided for in the plan is the adjustment mortgage to be made by the applicant under date of February 2, 1925, to the National City Bank of New York and William W. Hoffman, as trustees. Under this mortgage a total of $182,873,693 of 5 per cent convertible adjustment-mortgage bonds is to be issued to the reorganization managers for delivery by them to depositors at the rate stipulated in the plan, which is 80 per cent of the principal amount of deposited bonds. The bonds will be dated as of February 2, 1925, and will be entitled to interest at not exceeding 5 per cent per annum as hereinafter described, to be redeemable other than for the sinking fund on any interest date on or after October 1, 1930, at 105 and cumulative interest, and to be redeemable for the sinking fund on or after October 1, 1936, at the principal amount and cumulative interest and to mature January 1, 2000.

The bonds may be issued as series A, B, and C. The series A bonds are to be payable in dollars and may be issued in the denominations of $100, $500, and $1,000 for the coupon bonds and in the denominations of $500 and $1,000 and multiples of $1,000 for the registered bonds. The series B bonds are to be payable in French francs in the denominations of 400 and 2,000 francs. The series C bonds are to be payable in sterling money of Great Britain and are to be issued in the denominations of £115:16:5 and £79:2. At the holder's option the bonds may be converted into preferred and common stock at the rate of five shares of preferred stock and five shares of common stock for each $1,000, principal amount, of bonds. The series B and C bonds will be convertible at the rate aforesaid, shares of common stock for each $1,000, principal amount, of bonds. Scrip certificates for fractions of bonds less than $100 may also be issued in respect of the series A bonds. The conditions governing the payment of interest and sinking-fund payments in respect of the adjustment bonds are contained in article 5 of the adjustment mortgage. Interest at 5 per cent per annum is to be payable from February 1, 1925, to December 31, 1926, on April 1, 1927, and thereafter semiannually on October 1 and April 1 in each year to October

1, 1999. The last installment of interest is to be payable on January 1, 2000, and is to cover the interest from January 1, 1930, to the extent not previously paid. The interest on the adjustment bonds is to be noncumulative to January 1, 1930, and cumulative thereafter but without interest on any cumulations. All interest is to be paid from available net income in each year as ascertained by the method prescribed in the article stated. All of the available net income for each year may be applied, and one-third of the available net income for each year until it equals $7,500,000 and all such income for each year in excess of $7,500,000 must be applied so far as is necessary to the payment of the interest on the adjustment bonds.

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Interest will be required to be paid prior to the maturity of the bonds only in multiples of one-fourth of 1 per cent, smaller fractional amounts to be carried forward and added to that portion of the net income for the ensuing interest period required to be applied to the payment of interest and sinking fund on the adjustment bonds. On or before April 1, 1936, and yearly thereafter there is to be paid to the trustee for a sinking fund from the net income for the preceding year, after payment of the full cumulative interest on the adjustment bonds, an amount equal to one-half of 1 per cent of the authorized principal amount of adjustment bonds. Such sinking-fund payments are to be cumulative. Any remaining net income of any year until January 1, 1930, for which interest on the adjustment bonds at the full rate of 5 per cent per annum has not been paid or set apart for payment, and any remaining available net income in every year after January 1, 1930, for which the full cumulative interest, and beginning with the year 1935, for which the sinking-fund payments also shall not have been paid or set apart for payment, must be carried into a separate account available only for expenditures chargeable to capital account, for providing for discount on securities sold or for cumulative interest on the adjustment bonds, and, if such interest has been paid, then for the sinking-fund payments in respect of the adjustment mortgage and 50-year mortgage. No dividends may be paid on any class of stock until all interest and sinking-fund payments and cumulations on the adjustment bonds have been paid or set apart for payment.

The applicant's authorized capital stock is to consist of 5,021,721 shares, of which 2,923,804 shares are to be preferred stock of a par value of $100 a share, and 2,097,917 shares are to be common stock without nominal or par value. The preferred stock is to be entitled to yearly dividends at the rate of $5 a share before any dividends are paid upon the common stock. The dividends on the preferred are noncumulative. After the preferred stock has received its full dividend of $5 a share the common stock is to be entitled to receive all other dividends in that year up to $5 a share. All dividends in excess of $5 a share upon both the preferred and common stock are to be paid or set apart for payment in equal amounts per share upon the preferred and common stock. In case of dissolution or liquidation

the holders of preferred stock are to be entitled to receive out of the assets the par value of their shares before any distribution is made to the holders of common stock. Both classes of stock are to have equal voting power.

Appendix C to this report is the applicant's Exhibit 84 and shows (a) the participation in distribution of new securities by the holders of existing securities participating in the plan; and (b) comparisons as of June 30, 1927, of capitalization before and after the proposed
139 reorganization. The item of undisturbed bonds includes bonds assumed by the St. Paul, and also reflects changes occurring between the date of decree and June 30, 1927, so that this item is not fully comparable with the undisturbed bonds which appear in the decree of foreclosure. Under the plan, the total capitalization, taking the no-par-value common stock at $100 a share, would be increased approximately $8,676,000. This increase arises from the fact that an indebtedness of $60,676,672 will be incurred through the issue of that amount of 50-year 5 per cent mortgage bonds against the assessments upon the stockholders, while only $52,000,000 of the proceeds of these bonds will be applied to paying existing indebtedness of the St. Paul, represented by a like amount of notes to the Government. The increase will be represented by cash which may be used for other purposes contemplated by the plan, such as adjustments of interest, additions and betterments, new equipment, and working capital. The fixed charges would be reduced from $21,544,066 to $13,663,489, a reduction of $7,880,577. Beginning with the year 1930, the contingent interest charges on the adjustment bonds amount to $9,143,685, and beginning with the year 1936, the contingent sinking-fund charges amount to $1,139,368, making a possible total charge against income of $23,946,542 yearly, or an increase of $2,402,476 over fixed charges prior to the reorganization. It should be noted that about one-half of such increase is due to sinking-fund charges, and the remainder is due to replacing bonds bearing interest at 4 and 4½ per cent with 5 per cent bonds. The discharge of the Government notes would effect a reduction of 1 per cent in the rate of interest on that amount of indebtedness.

The companies which the applicant seeks authority to control, either wholly or in part, by acquisition of their capital stock and the amount of stock to be acquired are as follows:

Chicago, Terre Haute & Southeastern Railway Company	$4,300,000.00
Chicago, Milwaukee & Gary Railway Company	1,000,000.00
Davenport, Rock Island & Northwestern Railway Company	1,500,000.00
White Sulphur Springs & Yellowstone Park Railway Company	153,000.00
Indiana Harbor Belt Railroad Company	1,000,000.00
Minnesota Transfer Railway Company	7,000.00
Minneapolis Eastern Railway Company	62,500.00
Chicago Union Station Company	700,000.00
St. Paul Union Depot Company	103,600.00
Kansas City Terminal Railway Company	183,333.33
Des Moines Union Railway Company	200,000.00

The foregoing amounts of stock, with the exception of the first two companies, were owned by the St. Paul and were acquired by it prior to the effective date of paragraph (2) of section 5 of the act.

By our order of June 28, 1921,[1] we authorized the St. Paul to
140 acquire control of the Chicago, Terre Haute & Southeastern Railway Company, hereinafter called the Terre Haute, by lease and by purchase of capital stock. By our order of February 11, 1922,[2] the St. Paul was authorized to acquire control of the Chicago, Milwaukee & Gary Railway Company, hereinafter called the C., M. & G., by purchase of capital stock. The figures shown for the stocks of those two companies constitute their entire outstanding stock. As to the other companies the various amounts given represent fractions of the totals outstanding, the remainder being held by other companies as shown in the application.

The securities of other persons in respect of which the applicant requests authority to assume obligation and liability are those issued under the mortgages and equipment trusts, subject to which the properties were sold and acquired as appears in Appendix A, and the bonds of the several companies in the amounts shown in Appendix B hereto. The instruments under which the St. Paul assumed obligation and liability in respect of the latter securities and under which the applicant also proposes to assume similar obligations are set forth in Appendix B. We have heretofore authorized the St. Paul to assume obligation and liability in respect of the securities of the Terre Haute,[3] and of the C., M. & G.[2] The record shows that we have also authorized at various times the Kansas City Terminal Railway Company, the St. Paul Union Depot Company, the Chicago Union Station Company, and the Indiana Harbor Belt Railroad Company to issue some part of the securities herein sought to be assumed, and in connection therewith also authorized the St. Paul to assume obligation and liability in respect of certain amounts of bonds of the St. Paul Union Depot Company and the Chicago Union Station Company. Therefore, with the exception of the Minnesota Transfer Railway Company's bonds, we have had occasion to investigate and to enter orders pertaining to part or all of the securities which the applicant proposes to assume.

Authority is sought to issue for the applicant's corporate purposes, by sale or pledge, general mortgage 5 per cent gold bonds, series D, secured by the St. Paul's general mortgage dated May 1, 1889, which at any time may be in the treasury, up to a principal amount equal to the amount of expenditures, not otherwise capitalized, made by the receivers after June 1, 1925, for refunding underlying bonds and for additions and betterments. It is represented that from June 1, 1925, to February 1, 1927, such expenditures aggregate $17,163,507. It appears that there are in the treasury $12,212,000 of such bonds and that $18,000,000 additional bonds will be released upon liquidation of the indebtedness to the United States. There are also pledged $20,000,000
of such bonds to secure $14,000,000 of 10-year 6 per cent
141 bonds due in 1934 which may be redeemed on January 1, 1928,

[1] 70 I. C. C. 20.
[2] 71 I. C. C. 124.
[3] 70 I. C. C. 20, 594; 76 I. C. C. 197; 82 I. C. C. 728; 90 I. C. C. 315.

at 103. Upon the redemption at maturity of the 10-year 6 per cent bonds, $20,000,000 more of general-mortgage bonds will become available for sale or pledge. The applicant states that none of these bonds is to be presently issued, that no arrangements for their sale or delivery have been made, and that any sale or pledge thereof will be made only upon our authority after due application.

The following gives the general balance sheets of the St. Paul and its receivers as of December 31, 1926, as contained in the annual report to this commission, and of the applicant as given in an exhibit, which purports to show conditions as of May 31, 1927, had the reorganization been consummated as of that date.

	Dec. 31, 1926 (St. Paul)	May 31, 1927 (applicant)
Assets		
Investment in road and equipment	$704,366,719	$707,023,751
Improvements on leased railway property		105,517
Sinking funds	9,319	9,559
Deposits in lieu of mortgaged property sold	175,672	190,437
Miscellaneous physical property	4,680,509	4,477,854
Investments in affiliated companies	14,194,390	25,892,527
Other investments	582,103	587,147
Cash	9,084,958	15,165,727
Material and supplies	14,057,800	15,699,293
All other current assets	23,928,675	13,006,201
Deferred assets	668,768	348,112
Unadjusted debits	4,107,689	3,406,216
Total	775,856,602	785,912,341
Liabilities		
Common stock	117,406,000	[1] 174,342,842
Preferred stock	115,845,800	119,845,800
Premium on capital stock	36,184	
Grants in aid of construction	70,171	
Funded debt unmatured	394,436,100	444,920,787
Interest matured, unpaid	20,996,251	8,129,231
Funded debt matured, unpaid	46,950,515	16,000
All other current liabilities	22,473,102	29,746,289
Deferred liabilities	902,760	624,089
Accrued depreciation—Equipment	35,523,721	
All other unadjusted credits	13,553,161	8,287,303
Total appropriated surplus	1,698,905	
Profit and loss credit balance	5,963,932	
Total	775,856,602	785,912,341

[1] Represents 1,174,000 shares of no par value.

The applicant estimates that for the first five years of operation the revenues, expenses, and net railway operating income will be as follows, amounts being stated in thousands:

	First year	Second year	Third year	Fourth year	Fifth year
Railway operating revenues	$170,775	$174,495	$178,200	$182,910	$186,620
Railway operating expenses	136,450	138,025	139,530	141,205	142,950
Revenues from railway operations	34,325	36,470	38,670	41,705	43,670
Taxes	9,000	9,000	9,000	9,000	9,000
Uncollectable railway revenue	50	50	50	50	50
Equipment rents	2,760	2,550	2,350	2,150	2,150
Joint-facility rents	2,500	2,500	2,500	2,500	2,500
Net railway operating income	20,015	22,370	24,770	28,005	29,970

142 Should these estimates not be fully realized, and from the reports of present earnings being made to us it appears that they may not be attained within the period indicated, the fixed charges of $13,663,489 on the proposed capitalization would still be well within the estimates, and would leave a margin applicable to the adjustment bonds. The average net income available for interest for the years 1922 to 1926, inclusive, as taken from the applicant's Exhibit 24, was $17,168,330. The applicant expects that ultimately something will be earned for the stock. The fixed charges mentioned will be increased upon the further issue of bonds under the general mortgage or under the new first and refunding mortgage, but the expenditures from the issue of such bonds should be in respect of property producing additional revenues.

The estimates of freight traffic for the first five years after the applicant begins operations, expressed in thousands, are as follows:

	First year	Second year	Third year	Fourth year	Fifth year
	Tons	*Tons*	*Tons*	*Tons*	*Tons*
Products of agriculture	7,500	7,500	7,500	7,500	7,500
Products of animals	2,900	2,970	3,040	3,110	3,180
Products of mines	19,300	19,970	20,630	21,290	21,950
Products of forests	10,400	10,860	11,320	11,780	12,240
Manufactures and miscellaneous	10,600	10,930	11,260	11,590	11,920
Less than carload	1,750	1,750	1,750	1,750	1,750
Total	52,450	53,980	55,500	57,020	58,540

The estimates for passenger traffic do not indicate that much change is expected in the passenger revenues during the five-year period. Starting with revenues of $20,000,000 for the first year, it is estimated that by the fifth year they will increase to $21,000,000.

On behalf of the Jameson committee, which, according to the committee's petition to intervene, holds more than $17,000,000 of general and refunding bonds, it is alleged that the terms and conditions of the plan are unjust and unreasonable, that the proposed issue of securities and the assumption of obligations is not compatible with the public interest, and that if the acquisition and operation and the issue of securities and assumption of obligations are approved and authorized the interveners will be injured and the public interest jeopardized. It was stated in the petition that testimony would be presented in proof of the allegations. At the hearing interveners produced only one witness, whose testimony was confined chiefly to the introduction of exhibits showing the range of market quotations of the securities involved in the reorganization, operating statistics, a comparison of the value of the equities of the bonds secured by the foreclosed mortgages, and a hypothetical distribution of the proceeds of the sale.

143 It appears that some of the objections which have been raised against the plan are (1) that the proposed payment of the indebtedness to the Government would be preferential treatment, (2) that the C., M. & P. S. bonds ought not to receive equal

treatment with the general and refunding bonds, (3) that the provision in the proposed adjustment mortgage permitting net income up to $5,000,000 per annum to be used for capital purposes deprives the holders of general and refunding bonds of a substantial part of the income of the properties for the benefit of the stockholders, (4) that the issue of 50-year 5 per cent mortgage bonds to the stockholders to the extent provided for part of the assessment to be paid by them mortgages the bondholders' equity for the benefit of the stockholders, and (5) that as a whole the plan is preferential to the stockholders and prejudicial to the rights and interests of the holders of general and refunding bonds. From the argument of counsel for the Jameson committee we understand that the interveners do not now contend for all these objections, but specifically that the plan is preferential to the stockholders and therefore prejudicial to the holders of general and refunding bonds, and further that it is not in accordance with the principles and policies of the transportation act of 1920 providing for the regulating of the issue of securities by carriers subject to the interstate commerce act.

The proposed 50-year 5 per cent mortgage and adjustment mortgage are assailed because they are closed mortgages which, it is claimed, will remain dead things in the financial structure and prove detriments in future financing. It is suggested that some parts of the system might be dispensed with, such as cutting off the line of the C., M. & P. S. extending westward from Mobridge, or severing the line of the Terre Haute and the C., M. & G., although it is not our understanding that such treatment of these parts of the system is now urged.

Under paragraph (2) of section 5, pertaining to the acquisition of control by one carrier of another carrier, under lease or by purchase of stock, or in any other manner not involving the consolidation of such carriers into a single system for ownership and operation, we are given power to grant such applications if we find that such control will be in the public interest, and we may grant them under such rules and regulations and for such consideration and on such terms and conditions as we shall find just and reasonable in the premises. The Jameson committee urges that the provisions of that paragraph and section extend not only to the lease of the Terre Haute and the acquisition of the capital stock of the several companies shown in this report, but also to the acquisition of the
144 fee of the physical properties formerly owned by the St. Paul. It contends that the phrase "just and reasonable" applies not only to the consideration moving between the carriers in connection with the acquisition of control by lease or by purchase of stock, but also to the terms of the distribution of the new securities among the security holders of the St. Paul, and therefore that we must find that these terms are just and reasonable.

The Jameson committee argues that the transportation act, 1920, which incorporated into the interstate commerce act the paragraphs

and sections which we are here administering, established definite principles and policies to be followed in financing railroads emerging from receiverships. Among these, it is claimed that the amount of bonds should be limited not to exceed 50 per cent of the value of the property; that not more than 50 per cent of the earnings should be applied to interest on bonds; that the financial structure should be elastic, and therefore closed mortgages are not to be permitted; that income bonds are not to be issued; that stockholders are completely cut off from any equity of redemption by the bondholders taking possession of the mortgaged estate or by the foreclosure and sale of the properties; that the rights and interests of the various classes of creditors are to be fixed by us; that separation of ownership from management by voting trusts is to be prohibited; and that rights and interests of investors are to be protected. The contention as to the ratio of bonds and stocks to be established is based on the fact that under the provisions of section 15a of the act we are required to establish rates so that carriers as a whole, or as a whole in rate groups, will earn, as nearly as may be, a fair rate of return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation. Pursuant to paragraph (3) of that section we have determined that a fair return to be earned is 5¾ per cent. Upon such a rate of return it is urged that bonds should be limited as indicated so that the investment therein would have the quality of trust-fund investments, thus enabling bonds to be sold on a 4 or 4½ per cent basis. Such a structure, it is argued, would leave a substantial amount of earnings to be applied toward the payment of dividends on stock at a higher rate than would, because of the different positions as to security of investment occupied by the stock and bonds, be proper for interest on the latter. The Jameson committee asks us to deny the application and require that the St. Paul be reorganized in accordance with this conception of principles and policies.

The applicant claims that, with the exception of the allegation as to the principles and policies arising from the transportation act, which was presented for the first time in brief and on oral argument,
145 all these issues were raised in the petitions filed by the Jameson committee in the receivership proceedings and were decided against it by the denying of the petitions for right to intervene and by the decree confirming sale, in which it was found that all complaints as to the equity of the provisions of the reorganization plan were without merit and were overruled. An appeal was taken to the United States Circuit Court of Appeals for the Seventh Circuit upon assignment of error substantially reiterating the allegations contained in the petitions decided adversely by the district court. A decision rendered July 22, 1927, upon the appeal, affirmed the decree of the district court confirming the sale and approving deed with the proviso that the district court should modify its decree so as to make necessary the court's approval of a limit of the time thereafter to be

fixed by the reorganization managers for terminating the option to deposit general and refunding bonds. A petition for a writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit was denied by the United States Supreme Court on November 28, 1927.

The applicant urges that the same objections here made to the plan were considered by the court in the course of the receivership proceedings. Its argument is in substance as follows: The decree confirming the sale determined that the reorganization plan affecting the respective priorities of all persons and corporations interested in the railway company and its property is equitable and contains an equitable and timely offer of participation in the reorganization to all persons entitled thereto; all complaints as to the equity of the provisions of the plan were found to be without merit and overruled; therefore, as to the rights and equities between the holders of the respective classes of bonds and stock, such issues have been decided and are res adjudicata as between the parties. The decree is final, but article ninth thereof provides that the deeds authorized are not to be delivered until the applicant has been authorized by us to issue the securities provided to be issued under the plan or any modification thereof. The Jameson committee points out that its petition for leave to intervene was denied and that the applicant was not technically a party to the court proceedings, hence it claims the various elements necessary to invoke the doctrine of res adjudicata are missing.

This proceeding is not a case to determine the rights of private parties, but an application under applicable sections of the act by a corporation organized for the purpose of engaging in transportation by railroad to acquire and operate certain lines of railroad, to acquire control of other lines by lease and by purchase of stock, and to issue securities and assume obligation and liability in respect of the securities of other persons. As the public interest is to control us in the determination of such applications, the doctrine of res ad-
146 judicata is inapplicable. Nor can we accept the views advanced by the Jameson committee that we should extend to all portions of this application every provision of the several paragraphs and sections under which it was filed, solely because it was filed as a single application. Those portions of the application which clearly relate to a specific paragraph and section of the act will be considered and disposed of under the applicable section. The terms and conditions which we may attach to the issuance of certificates under the provisions of paragraphs (18) to (20), inclusive, of section 1 of the act are limited to such as in our judgment the public convenience and necessity may require. Applications filed under the provisions of section 20a of the act may be granted upon such terms and conditions as we may deem necessary and appropriate in the premises. While the phrase "just and reasonable" as applied to such terms and conditions as we may impose does not occur in either section 20a or paragraphs (18) to (20), inclusive, of section 1, this does not mean that we are not to consider the terms and conditions

under which it is proposed to effect a reorganization and the treatment to be accorded the various classes of security holders of the defunct corporation. The terms and conditions of such reorganization and the treatment to be accorded such security holders may have a material bearing on the public interest.

As to the contention that the plan is preferential to the stockholders and therefore prejudicial to the holders of the general and refunding bonds, counsel for the applicant stated that there had been deposited under the plan bonds and stock owned by approximately 40,000 security holders and about equally divided as between bonds and stock. The details of the deposited securities have been given earlier in the report. The holders of these securities have agreed among themselves that the plan proposed is the one under which they are willing to take the securities of the applicant, which securities will represent their respective interests and relative positions in the new company. Opposing the plan there are said to be about 50 bondholders owning approximately $17,000,000 of general and refunding bonds who say they will be injured if the application is granted. We are told that the deposits of the large percentages of the securities involved in the receivership were obtained by coercive measures and threats of penalties if deposits were not made promptly. None of the security holders assenting to the plan by the depositing of their securities has complained in this proceeding as to the means used in obtaining the deposits. Their representatives have purchased the properties at the foreclosure sale pursuant to a plan to which they have assented by deposit of their securities. The purchase price is to be paid principally by applying to that purpose the bonds deposited and the Government notes to be liquidated by the assessment levied upon the stockholders. Under the terms of mort-
147 gages securing the general and refunding and the C., M. & P. S. bonds, the bondholders became entitled, upon default, to the possession of the properties, subject to the lien of mortgages securing underlying bonds. These bondholders elected to foreclose the mortgages and to sell the properties for the payment of their claims. This has been done and the bondholders not assenting to the plan are cut off by the sale from any ownership in the equity, just as are the stockholders, and such bondholders are now entitled to receive only their distributive share of the proceeds of the sale, said to amount to about 48 cents on the dollar, while the nonassenting stockholders are to receive nothing. At the argument, on September 29, 1927, counsel for the applicant stated that the time for terminating the option to deposit bonds had not been fixed, and that the holders of undeposited bonds could still avail themselves of the benefits of the plan.

The bondholders depositing their bonds under the plan have, through their representatives, purchased the properties, and have, pursuant to provisions in the plan, previously agreed upon, apportioned to the stockholders a share of the bondholders' equity. They

have thus permitted the stockholders to retain an interest in the properties upon the terms which have been stated above. We have not been advised of any rule of law or equity which requires that the stockholders should be absolutely foreclosed and cut off, except to the extent of new money contributed by them, as has been claimed by the Jameson committee, or which forbids bondholders from sharing with the old stockholders a portion of the equities purchased. The plan, which contains the provisions whereby the old stockholders are permitted to retain an interest in the new company, was submitted to the District Court and approved by it. The applicant shows that the courts look with favor on the practice of permitting stockholders to retain an interest in reorganized properties, and especially in transportation systems where the conditions render such course lawful. We find nothing indicating that such practice here is contrary to the public interest. In our consideration of arrangements of this character, however, we will also examine the amount of the equity remaining after the issue of bonds, for the purpose of ascertaining whether the remainder will justify an issue of stock in the total par amount proposed.

In the instant case the testimony is that the value of the properties proposed to be acquired ranges from $640,000,000 to $900,000,000. For purposes of argument, the Jameson committee took $700,000,000. The book value on May 31, 1927, in round numbers was $707,000,000. Against these values or this investment there will be outstanding after the proposed reorganization the following: Undisturbed
148 bonds, excluding $22,129,000 of bonds assumed pursuant to the lease of Terre Haute, $160,001,960; 50-year 5 per cent mortgage gold bonds, $106,395,096; adjustment-mortgage bonds $182,873,693; preferred stock $119,845,800; total $569,116,549. Using the lowest figure, $640,000,000, and deducting from that amount the total par value of the securities enumerated, or approximately $569,100,000, would leave $70,900,000 as representing the value of the 1,174,060 shares of common stock without nominal or par value. In the hypothetical balance sheet as of May 31, 1927, the applicant shows $174,342,841.64 for the book value of the common stock. Without expressing any opinion as to the value of the no-par-value common stock, it would appear that upon applying the test suggested there will remain an unmortgaged equity in the properties sufficient to permit the bondholders to assign to the stockholders an interest therein and to support the issue of stock in the amounts proposed. We have not yet determined the final value of the St. Paul's properties and nothing herein contained is to be construed as a determination of that value.

We are unable to accept the views of the Jameson committee as to the principles and policies to be followed in financing railroads emerging from receivership. While some of these principles and policies may be desirable for adoption in railroad financing, we do not believe it can be said that they are reasonably deducible from the language of the paragraphs and sections involved. If the Congress had meant that we should follow these principles and policies

in administering the act, it could and would have said so in unmistakable terms and would not have left such important and far-reaching policies to be inferred as a matter of statutory construction.

That the plan, when regarded in the abstract and in the light of a possible ideal of sound financial theory, is defective is manifest. While the absolutely fixed charges, default in payment of which means bankruptcy, have been brought within reasonably safe limits, even assuming that capital expenditures in the next few years are met by sales of the bonds provided therefor, the issue of adjustment bonds may prevent the company for a considerable time from obtaining new capital by the sale of other than fixed-charge obligations. Moreover, the possibility of accumulation of unpaid interest on the new adjustment bonds after 1930 may make still more remote the possibility of stock financing. Such accumulations can not nowadays readily be adjusted by additional capital issues as has been done at times in the past, and to that extent they may become a clog upon the property in the future. Securities of this sort are hybrid things and have no place in a thoroughly sound financial structure. Were we dealing here with a new enterprise at its inception, and were it a question of a capital structure to be provided for that enterprise,
149 the bonds and stocks of which were to be sold to the public, it would probably be our duty to disallow the inclusion of such a security in that structure. We have, however, a different situation before us.

While in our consideration of the application we are not bound by any existing agreements that may have been made among the security holders, reorganization managers, purchasing committees, or others, and while both the applicant and the Jameson committee admit that possibly other plans could be devised which would enable the St. Paul receivership to be lifted, we do not feel warranted in deferring action until an ideal plan may be formulated and presented. Here is an application based upon a plan agreed upon after bargainings and compromises among the five committees representing numerous holders and large amounts of bonds and stocks. Against the interest represented by a great number of security holders and by high percentages of the amounts of securities outstanding is the interest of a small number of bondholders owning a relatively small percentage of general and refunding bonds. It has not been shown wherein such bondholders will be injured to any greater degree than the bondholders assenting to the plan; nor has it been shown wherein the public interest will be served by denial of the application.

If the application is granted the receivership can be terminated and these properties returned, so to speak, to the security holders for management and operation. The application is one under which the applicant proposes to acquire and operate all the lines of railroad embraced within the St. Paul's system. Under it there will be no severing or dismemberment of any existing line. The plan will

preserve and maintain the unified system as it has been built up, which seems to be in the public interest. Under the plan a financial structure will be erected which will eliminate the early maturities existing under the general and refunding mortgage and will substitute therefor maturities of 50 and 75 years, the latter embracing 80 per cent of the bonds foreclosed; which will bring the actual fixed interest charges safely within the net earnings applicable to interest; and which by the execution of a new mortgage subordinate in lien only to the liens of the mortgages securing the undisturbed bonds, will provide a means for refunding underlying bonds and for future financing. The fact that two of the proposed mortgages are to be closed mortgages should not interfere with such financing. This might have been the case if their liens had been superior to subsequent mortgages, but the plan provides for three mortgages, and in these mortgages specific provisions are made whereby the liens of the 50-year 5 per cent mortgage and the adjustment mortgage are subordinated to the lien of the first and refunding mortgage under which future financing is to be done. It would seem that the existence of closed mortgages inferior in lien to the first and refunding mortgage would not affect the marketability of bonds issued under the latter mortgage.

The properties have been in receivership over two and one-half years, and, if the application is approved, will probably have been in receivership for three years or longer before the receivership can be terminated. If the application should be denied, the receivership may continue indefinitely. The reorganization managers would have to prepare a modified or new plan and if such plan were disapproved or not approved by any one of the three committees which are parties to the plan, or if the changes adversely affected to a material degree any class of securities, withdrawals would follow, and the reorganization would have to be started anew. We do not and can not know how long a time would be required to procure assents to a new or modified plan, or whether or not as large percentages of the securities would be deposited. Another or modified plan might provoke equal opposition from any other group or groups of security holders. Any material change in the plan will cause further expense and delay. Upon consideration of all the facts we are of opinion that the public interest will be served by an approval of the application, even though we should believe that a stronger financial structure might have been erected by the adoption of some other plan of reorganization.

The plan provides that all of the preferred and common stock of the applicant which is to be issued to the stockholders assenting to the plan is to be deposited under a voting-trust agreement which is to continue until January 1, 1930, and may be extended from time to time beyond that date by action of the holders of voting-trust certificates representing a majority in number of the shares of preferred and common stock. The entire voting power of the capital stock of the applicant is to be vested in five trustees, to be designated

by the reorganization managers, three to be approved by the bondholders' protective committee, one by the preferred-stock holders' committee, and one by the common-stock holders' committee. A copy of the proposed voting-trust agreement has been filed with the application. Subject to the approval of these committees the power to name the voting trustees rests with the reorganization managers. By this provision of the plan the applicant's stockholders have no voice in the creation of the voting trust, in the selecting of the voting trustees, or in the management of the applicant until January 1, 1930.

That as a general rule power to control corporation management should rest in owners of share capital rather than in those who occupy a position of creditor and that the owners of share capital should thereunder exercise this control periodically and at reasonably
151 frequent intervals, is commonly regarded as a sound principle.

Any proposals which would result in a more or less complete alienation of such power over an extended period of time by its lodgment either with creditors or with an individual or small group of individuals, can be justified only by demonstration of facts of special application and sufficient weight to warrant us in departing from the rule. In the instant case the proposals above recited, involving, as they do, compulsory alienation of complete voting power from shareholders for a period of two years only, after which shareholders may resume this power, may be regarded as not unreasonable in view of the facts. The purpose of the proposed voting trust is stated to be the initial provision of capable management for the reorganized property. There is no apparent reason to doubt the bona fides of this statement, nor is there reason to suppose that this purpose will not be achieved. The instant application will, therefore, be granted in this respect without prejudice to the ruling principle above described, which principle should be kept clearly in mind by those who in the future may find it necessary to apply to this commission for powers similar to those requested in the instant application.

The applicant has expressed the belief that it will be unnecessary to form an underwriting syndicate and to have underwritten the participation in the reorganization of any class of security holders. Our order will require that the applicant shall not pay any underwriting commission in connection with the reorganization.

As to the authority sought to issue general-mortgage 5 per cent gold bonds, series D, one of the objects to be achieved under a receivership is the rehabilitation of the properties by the making of needful expenditures for maintenance and for additions and betterments through applying to such purposes the income which ordinarily would be paid to bondholders for interest. For a new company acquiring the properties to capitalize, by the subsequent issue of bonds, any of the expenditures made for capital purposes during the receivership and before it took possession of the properties would negative the benefits derived from withholding interest from the bondholders and applying such funds to the purposes indicated. We

are of opinion that under these circumstances the issue of general-mortgage bonds ought not to be authorized except upon the express condition that the proceeds therefrom should only be expended for capital purposes that would not thereafter be used as a basis for further capitalization. As the applicant has stated that it has no present arrangements for the sale or pledge of the general-mortgage bonds, that part of the application will be denied without prejudice to the applicant's right to renew the request in a subsequent application.

152 The State of Wisconsin, by special counsel representing its attorney general, has asked that we withhold our authority to issue the securities in the amounts contemplated by the plan until certain contracts entered into by the St. Paul for the purchase of electric power are either abrogated or reformed. It is alleged that because of provisions in those contracts calling for the using of certain specified minimum kilowatt-hours, the St. Paul has been compelled to pay for more power than it has used. The decree of foreclosure gives to any purchaser the right to disavow within one year any contract, not fully performed, made or assumed by the St. Paul or any predecessor company. The applicant has not taken possession of the properties. No evidence was introduced as to the action the applicant will take in regard to such contracts. Under the interstate commerce act the management of railroads is charged with the responsibility of operating them in an honest, efficient, and economical manner. It has not been shown that the applicant will be operated otherwise, and therefore it may be expected that those who will be responsible for its management will conduct its affairs in the full consciousness of the duties imposed upon them. An objection was also made to the payment of compensation of reorganization managers, protective committees, and the fees of their counsel, because it was claimed that the receivership proceedings had not been conducted in accordance with the provisions of the statutes of the State of Wisconsin, the domicile of the St. Paul, which require the calling of a meeting within that State of the creditors and stockholders for the purpose of considering plans of reorganization. This does not appear to be a matter which may properly be considered in this proceeding.

Of the $4 a share assessment to be paid by the stockholders, $1.50 a share on the existing preferred and common stock is to be set aside for the compensation of the reorganization managers, various protective committees, and the fees of their counsel, depositaries, and expenses in connection therewith. Any balance remaining after such payments may, at the option of the reorganization managers, be paid to the applicant for additional working capital or returned to the holders of certificates of deposit for stock. Such provision will produce approximately $3,500,000 for reorganization expenses. Out of the foregoing amount there is to be appropriated for the compensation of the reorganization managers a sum equal to one-fourth of 1 per cent

upon $230,950,796 of bonds outstanding, and 20 cents a share upon 2,333,432 shares of stock outstanding, or a total of about $1,044,000. This amount is subject to some modification due to changes which may occur in the amount of bonds and stock outstanding in the hands of the public. There has been put in evidence a
153 memorandum submitted to the Senate Committee on Interstate and Foreign Commerce at a hearing on March 25, 1926, which gives estimates of the expenses in connection with the termination of the receivership and reorganization of the St. Paul. The estimates are summarized under four headings: Expenses over which courts have jurisdiction, between $1,000,000 and $1,250,000; expenses to be paid out of the $1.50 per share, between $2,636,063 and $3,381,063; other disbursements in connection with the reorganization, between $336,400 and $406,400; expenses of new company, between $977,500 and $1,397,500; a total of between $4,949,963 and $6,494,963. Memoranda have also been submitted giving the nature and extent of the services rendered by the several committees and their counsel. The evidence which was presented in respect of the total expenses of the reorganization was not revised to date when introduced in this proceeding, and, as above shown, such estimates are over 18 months old. It would appear that at this later date estimates more nearly approximating actual figures could be furnished. The record is insufficient to enable us to arrive at an opinion as to the reasonableness of the expenses and the public interest affected thereby. Jurisdiction of this proceeding will be reserved for the purpose of taking further testimony as to the expenses of the reorganization, the nature and scope of the services performed for the compensation and fees claimed, and any other matters appropriate in the premises, and for the entering of pertinent orders in connection therewith. The authority herein granted to the applicant to issue its securities in accordance with the plan will be upon the express condition that the applicant shall impound in a separate fund the money received from the payment of $4 a share by the holders of preferred and common stock and shall not pay from such fund any amounts unless and until authorized by due order of court or by this commission.

It seems appropriate here to recall that in the last several years we have permitted to become effective a number of reorganization plans involving capital structures which, like that dealt with in this report, left something to be desired from the point of view of fully sound financial standards. We have done this in full appreciation of these shortcomings, and solely upon the ground that the major public interest seemed to us to require that the properties concerned should at the earliest possible moment be released from receivership and restored to active management by those financially interested therein.

Upon the facts presented, and subject to the observance of the conditions in the certificate and order, we find:

1. That the present and future public convenience and necessity require the acquisition and operation by the applicant of the lines of railroad formerly owned and/or operated by the St. Paul as
154 described in subdivisions A, B, C, and D of Schedule VI of the application.

2. That the acquisition by the applicant of control of the Terre Haute, by purchase of its capital stock and by lease of its railroad, and of the C., M. & G., the Davenport, Rock Island & Northwestern Railway Company, White Sulphur Springs & Yellowstone Park Railway Company, Indiana Harbor Belt Railroad Company, Minnesota Transfer Railway Company, Minneapolis Eastern Railway Company, Chicago Union Station Company, St. Paul Union Depot Company, Kansas City Terminal Railway Company, and Des Moines Union Railway Company by purchase of capital stock will be in the public interest, and that the terms and conditions of said lease and the consideration to be paid thereunder and the terms and conditions under which the applicant proposes to acquire said capital stocks and the consideration to be paid therefor, are just and reasonable.

3. That the issue by the applicant as aforesaid of 1,174,060 shares of common stock without nominal or par value, $119,845,800 of preferred stock, and from time to time additional amounts of common stock up to 914,369 shares, and of preferred stock up to $91,436,900, as may be necessary to convert the 5 per cent convertible adjustment-mortgage bonds, $106,395,096 of 50-year 5 per cent mortgage bonds, series A, B, or C, and $182,873,693 of 5 per cent convertible adjustment-mortgage bonds, series A, B, or C, and the assumption, as purchaser of the properties formerly of the St. Paul, of obligation and liability in respect of the mortgages, equipment-trust agreements, and leases and of the securities issued and outstanding thereunder, subject to which the properties are to be acquired, and in respect of the bonds of certain companies, as shown in the application and in Appendixes A and B of this report (a) are for lawful objects within its corporate purposes, and compatible with the public interest, which are necessary and appropriate for and consistent with the proper performance by it of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) are reasonably necessary and appropriate for such purposes.

An appropriate certificate and order will be issued.

HALL, Commissioner, concurring:

I am in accord with the conclusions authorizing issuance and assumption of liability in respect of securities and granting certificate of public convenience and necessity. I do not conceive that as a commission we have anything to do with the application which may be made of the $4 per share paid in to the reorganization managers by existing stockholders. What those stockholders do with their
155 money is their affair unless and until some part of that money

is paid over to the applicant. We are not dealing with the merits or demerits of the reorganization plan as such.

In my judgment applicant's request for authority to acquire control of various carriers through purchase of some part of their capital stock should remain in abeyance until the applicant has become a common carrier, without prejudice to renewal of the request thereafter.

EASTMAN, Commissioner, dissenting:

In my judgment it is impossible upon this record to make the findings which section 20a of the interstate commerce act requires us to make as a prerequisite to the approval of security issues. The questions involved are so important that I shall take the liberty of discussing them at some length. They merit thorough public consideration. Before taking up vital matters I shall deal briefly with certain points which I conceive to be of little consequence but which have been stressed by the reorganization managers. The oral argument of counsel for the applicant centered upon these points:

1. That the protesting bondholders are mere speculators seeking a great profit on bonds bought at a low figure after the receivership.

2. That most of the stockholders and bondholders have agreed without reservation to the reorganization plan.

3. That most of the issues raised by the protesting bondholders have been considered by the courts and are, therefore, res adjudicata.

The first two of these points were stressed in the courts also and apparently with much effect. Let us consider, one by one, all three.

As to speculation.—The protesting bondholders, or at least the most prominent of them, owned a large block of bonds prior to the receivership, but they have bought a substantial amount since then at relatively low prices. Given faith in the future of the property, such purchases were natural and, so far as I can see, legitimate. That these purchases were made as a speculation in reliance upon the success of the protests against the reorganization plan it is difficult to believe. The bondholders must have known that they had only a fighting chance in a contest with the reorganization managers. But assuming that they were speculating, what relevancy has that fact?

Speculation has been rife all along the line. The stock offered the best opportunities. Most of the large stockholders of the old company unloaded some time before the receivership. Immediately thereafter the common fell to about $3.25 and the preferred to about $7.50 per share. The announcement of the reorganization plan, providing very generously for the stockholders, as we shall see, stimulated the upward movement. Present prices are around $20
156 for the common and $37 for the preferred. Transactions have been heavy. The evidence shows that the members of the stockholders' protective committees represent to a very considerable extent holdings acquired since the receivership. Both the chairman of the common-stock committee and the chairman of the preferred-

stock committee bought practically all that they now hold thereafter, and the Iselin committee bought no less than 300,000 shares. The record also shows that of the 20 largest stockholders of the St. Paul there are now only two that are not brokerage houses, holding for clients whose identity is not disclosed. If speculation is a reason for discrediting the views expressed by the protestants, it is equally a reason for discrediting other views that have found voice before us.

Agreement upon the plan.—The plan has the apparent support of most of the stockholders and bondholders. To gauge the weight which ought to be given to this fact, it is necessary to understand the auspices under which the plan was formulated and how this assent was secured. For many years the St. Paul had conducted its financial operations exclusively through Kuhn, Loeb & Company, in association after 1909 with the National City Bank or National City Company. In the report on the investigation of the St. Paul's affairs, issued contemporaneously with this report, it is shown that these bankers precipitated the receivership. Immediately thereafter they made themselves reorganization managers, and they named the chairmen of the three committees which were organized to protect the interests of the bondholders, common-stock holders, and preferred-stock holders. On the bondholders' committee, indeed, the reorganization managers were directly represented, and by the reorganization plan they were made the "sole judges" of the compensation to be paid to all these committees.

The reorganization managers and the committees were able within a comparatively short time to agree upon a plan, and it was then presented to the security holders with the very considerable prestige and momentum which it derived from such an agreement. But there were other reasons impelling, if not compelling, assent by the security holders. Under the plan, those who do not become parties "within the periods limited or fixed therefor" can thereafter become parties only "upon obtaining an express written consent of the reorganization managers," and the latter are empowered "in their absolute discretion" and "upon such general or special terms and conditions as they see fit to withhold or give such consent." The evidence shows that the threat implied in this provision was not overlooked by the reorganization managers. In advertisement after advertisement the possibility, if not the probability, of serious penalties if they did not come in within the time limit was made
157 very clear to the security holders, and in several of these advertisements definite dates were specified, although they were later extended. The Circuit Court of Appeals in affirming the decree of the District Court confirming the sale finally modified that decree so as to provide that any limit of time upon the deposit of bonds under the plan should be approved by the District Court; but when that happened the assent of most of the security holders had already been obtained.

Nor is this all. In a sale under foreclosure the debts in default can be used in payment of the purchase price, but those not holding

evidences of such indebtedness must pay cash. As a practical matter this makes it impossible, in the case of a great railroad property like the St. Paul, for other interests to bid. It has also become the practice of the courts in such cases, for reasons not wholly clear, to fix a very low upset price, and ordinarily the property is bid in at that figure. Here a slightly higher amount $140,000,000, was bid in behalf of the reorganization managers, which, added to unforeclosed direct obligations of $160,001,960, made a total of $300,001,960, as contrasted with a property valuation on the so-called O'Fallon basis of not less than $640,000,000. This sale price, however, determines the cash that a nonassenting bondholder who is not a party to the reorganization plan will receive, and it means about 48 cents on the dollar. A nonassenting stockholder will receive not one cent.

The security holders were, therefore, in this predicament. They could either join in the reorganization plan, or they could stay out and contemplate the necessity of employing counsel and experts in an endeavor to persuade the courts or the commission that the plan ought not to be approved. If they chose the latter alternative and failed, they ran the risk that they could then become parties to the plan only upon the payment of unknown penalties fixed at the discretion of the reorganization managers, or that they would be doomed to accept a ruinous cash settlement. From observation in the past the security holders knew also that a fight against reorganization managers behind Wall Street intrenchments is an uphill struggle against heavy odds.

Summing up the situation, once the reorganization managers and their personally selected committees had agreed upon a plan, resistance upon the part of security holders involved a probability of heavy expense and also grave risk of ultimate disaster. That they at length flocked to the standard of the reorganization managers after considerable evidence of reluctance is not a fact which should weigh heavily in our deliberations.

Res adjudicata.—This doctrine has no application here. It is directed primarily at the parties to litigation. It means that after parties have submitted a cause to the courts and it has been
158 decided, they can not thereafter present the same cause for renewed consideration. It is intended to set a limit to litigation. The commission, however, is not a court, nor is its jurisdiction with respect to the issue of securities dependent in any way upon the contentions of parties. In making the findings which the law requires it is our own judgment which must govern, and not the opinion which some court may have expressed upon a similar issue. Nor are we dependent upon the contentions or evidence presented by the applicant or any intervener in the proceeding. The law makes it our duty to investigate, and if applicant or interveners do not develop the facts necessary to an informed judgment it is our duty to develop them. Our jurisdiction is made "exclusive and plenary," and so long as we keep within the bounds of the statute our findings are not re-

viewable by the courts. In other words, the only question that a court can consider upon appeal from our decision, apart from any question as to the constitutionality of the statute, is whether we have acted within the scope of our statutory authority, although this may include, of course, the question whether we have acted arbitrarily.

This brings me to the more vital matters. Under section 20a of the interstate commerce act we must find, before we can approve the issues in question, that they are—

1. For a lawful object within the corporate purposes of the carrier.
2. Compatible with the public interest.
3. Necessary or appropriate for or consistent with the proper performance by the carrier of service to the public as a common carrier, and will not impair its ability to perform that service.
4. Reasonably necessary and appropriate for the corporate purpose in question.

The statute does not leave decision to our discretion, but lays down a specific rule. We are permitted to make an order authorizing the issue only if we can make the above findings. The language is very comprehensive, and we must make all of the findings specified. The statute contemplates interference with private initiative, but so does all public regulation. It is our duty, regardless of such interference, to determine whether upon the record before us we can conscientiously make these necessary findings. Obviously we are not concerned with controversies between groups of security holders, as such, but, on the other hand if it can be shown that the matters in issue in these controversies have a bearing upon the findings which the law requires us to make, we can not disregard them merely because equities of a private character are also involved.

In my judgment the findings required by the statute can not be made on the record before us, for two main reasons:

159 I

When a railroad has been unable to meet its obligations and has fallen into receivers' hands, the "proper performance by the carrier of service to the public" and the "public interest" clearly demand that any reorganization shall leave the carrier, so far as practicable, with a sound financial structure which will reduce to a reasonable minimum the danger of recurring insolvency and which will make it possible to secure capital for future needs in a manner conforming to sound financial principles. The public interest also demands, it seems to me, that no class of securities issued in connection with the reorganization shall masquerade in a misleading guise, and that all securities which have the general characteristics of stock shall have a voice in the management of the property. Let us see how the proposed financial structure conforms to these standards.

We must start, I think, with the premise that the new company should be prepared to face periods of business depression as well as periods of prosperity, and that there can be no certainty that it will

enjoy better earnings in the future than it has labored under in the past. This is a particularly important premise in the case of a carrier operating in the Northwest.

Under the reorganization the capitalization of the St. Paul will in gross amount be substantially what it has been in the past. The difference will lie in the classes of securities and their antecedents. The funded debt secured by some sort of mortgage will also remain substantially unchanged in gross amount. The interest charges upon the new funded debt will amount to $22,807,174 yearly as compared with $21,544,066 upon the old funded debt, an increase of $1,263,108. However, and this is the vital point relied upon in support of the plan, $9,143,685 of the new interest charges, those upon the so-called adjustment-mortgage bonds, will not be fixed but will be payable each year only if earned. But beginning with 1930, only two years away, this $9,143,685 will become cumulative, and all unpaid interest must be paid in full before any dividends can be declared upon stock. Provision is also made for a new mortgage, junior only to the underlying mortgages upon which there has been no default, and under this new mortgage the funded debt can be increased without limit, except as a limit is imposed by the stockholders or this commission. It is also provided that two-thirds of the net income after fixed charges, up to $7,500,000, may be diverted to capital expenditures, or a possible maximum diversion of $5,000,000 per year.

If anything is clear it is that under this financial structure, and unless earnings in the future average much better than the past gives reason to anticipate, it will be utterly impracticable for the
160 new company to finance by new issues of stock, and that the financing of its future needs must be done by repeated issues of the new mortgage bonds or such of the old general-mortgage bonds as are available, except to the extent that capital requirements are met by diversion from earnings at the expense of the adjustment-bond holders.

The financial unsoundness of the practice of securing new capital wholly or even largely by continual increases in funded indebtedness is strikingly illustrated by the history of the St. Paul itself. It was one of the principal factors leading up to the receivership. In the past this practice might under wise management of the St. Paul have been avoided. But under this proposed new financial structure it becomes, in all probability, compulsory and inevitable. Is this in the public interest or "appropriate for or consistent with the proper performance by the carrier of service to the public?"

I am quite willing to concede that under the new plan insolvency may be avoided for many years and, if all goes well and earnings are very favorable, it may prove possible to retire the adjustment bonds by issues of stock and thus correct the financial structure. But this latter possibility is remote, and risk of disaster through an unsound structure is clearly a risk that ought to be avoided, if possible, and as I see it there is no question about the possibility in this case.

So far, also, as the adjustment-mortgage bonds are concerned, it is conceded that they sail under false colors. For most practical purposes they are not one whit better than preferred stock with cumulative dividends. But notwithstanding their real character, they masquerade as bonds and are not given voting power. The voting power, after 1930, is to be confined to the securities labeled as stock which are likely to be of interest chiefly to speculators. Incidentally the adjustment bonds can not be used for future financing because the mortgage is closed.

The excuses offered for these nondescript securities and the failure to give them voting power are, I understand, (1) that the bonds which they will replace are to a considerable extent held by savings banks which are not permitted to hold stocks, preferred or common; (2) that by making these securities "bonds" instead of preferred stock, a saving in taxes of about $1,000,000 will result; and (3) that it is impracticable to give bearer bonds voting power.

As for the first point, the protesting bondholders state on brief that the New York savings banks hold $4,270,000 of St. Paul junior bonds as compared with total resources of $4,348,000,000, and that the similar holdings of the Massachusetts saving banks amount to $9,658,000 as compared with total resources of $1,907,000,000. If
161 this be so, a forced sale of these bonds can hardly be considered of moment. But in any event, if it is unsound practice for these savings banks to hold preferred stock it is equally unsound for them to hold the proposed adjustment-mortgage bonds. Why should we connive in what is in effect an evasion of the safeguards imposed by law?

As for the second point, the saving estimated is in income taxes. If dividends on preferred stock should be taxed, it is difficult to see why we should permit the equivalent of such dividends to be called something else in order that no tax shall be collected.

As for the third point, just why these bonds must be "bearer bonds" and can not be registered I do not know. However, this difficulty, if it is a difficulty, would be avoided by substituting preferred stock.

II

The assets of an insolvent corporation are a trust fund for the benefit of creditors in the order of their priority. That, at least, is the theory of the law.

"The property of a corporation is doubtless a trust fund for the payment of its debts, in the sense that when the corporation is lawfully dissolved and all its business wound up, or when it is insolvent, all its creditors are entitled in equity to have their debts paid out of the corporate property before any distribution thereof among the stockholders. Wabash, St. Louis & Pacific R. v. Ham, 114 U. S. 587, 594."

A mortgage bond is a security entitling the holder, in accordance with this principle, to certain rights which the investor should have reason to believe will be scrupulously respected under all circumstances.

When a large corporation, like a railroad company, becomes insolvent and its property is sold under foreclosure, however, a sale for cash with distribution of the proceeds among the creditors in the order of their priority is impracticable. Instead the property is bid in by representatives of the defaulted creditors, whose bonds are used in payment of the purchase price, and it is then taken over by a new railroad company, organized for the purpose, which issues new securities in lieu of the old. The result in practical effect is a reorganization of the financial structure of the old company. In strict theory it would seem that the defaulted creditors, in such an event, are entitled, before anything is given to the stockholders, to new securities with a fair value approximately equal to the principal of the debt plus unpaid interest. Indeed prior-lien creditors are entitled to such compensation before anything is paid to creditors with junior liens. In practice, however, this is seldom the result, and stockholders of the old company frequently receive corre-
162 sponding amounts of stock of the new company without any such satisfaction of the creditors' claims. To such an extent has this become the practice that it is argued that a new principle of law has become applicable to such cases, namely, that it is only necessary that the order or priority among the creditors and stockholders shall not be disturbed by the new financial structure.

The present case affords a striking illustration. The property of the St. Paul was sold under foreclosure of the junior mortgages at a price which apparently wiped out the stockholders completely and left only 48 cents on the dollar for the bonds in default. A reorganization, however, is proposed which provides for both the bondholders and the stockholders. Sacrifices are necessarily entailed by a reorganization. Who makes the sacrifices here? The best approach to this question, it seems to me, is to compare the situation in which the stockholders will find themselves after the reorganization with their situation prior thereto.

The stockholders will have precisely the same number of shares as before, and their place in the new financial structure will in no important respect be inferior to their place in the old, except that the interest rate will average a trifle higher on the new than on the old bonds. To regain their position in this way the stockholders are called upon to do two things:

1. Contribute $4 per share, which will be used in part for reorganization expenses and in part for working capital, and which it appears may also be returned in part at the discretion of the reorganization managers.

2. Invest $24 per share, in the case of the preferred stock, and $28 per share, in the case of the common, in new 50-year 5 per cent

mortgage bonds at par. These bonds will have a lien on the property underlying the lien of the adjustment-mortgage bonds, which the defaulted bondholders are to receive, and will be junior only to the $182,130,960 of undisturbed bonds and any bonds that may hereafter be issued under the old general mortgage or the new first and refunding mortgage.

This investment in new bonds obviously involves no sacrifice on the part of stockholders, except to the extent that they are required to pay more than the bonds are worth. The chairman of the bondholders' committee testified that these bonds are "intrinsically" worth par, and in view of the character of their security and the tendency of the money market he is probably right. They are now selling at about 96. The actual sacrifice involved in their purchase at par by the stockholders is, therefore, small in any event and likely to be nil. It follows that the only real sacrifice required of the stockholders in return for a position in the new financial structure
163 equal to that which they held in the old is $4 per share. Obviously this is not the sacrifice relied upon to put the new company upon its feet financially.

The situation may be tested in another way. The contribution of the stockholders at $4 per share amounts to $9,330,072. Assuming that the bonds in which they are required to invest are worth only 96, their further contribution is $2,427,067, making a total of $11,757,139. They are to receive stock of the new company, the present curb quotations on which are about 26 for the common and 44 for the preferred, making a total market value on this basis of $81,497,712. In other words, for a payment of $11,757,139 at the maximum, they regain an equity worth $81,497,712, in the face of the fact that the creditors secured by mortgage are being called upon to make serious sacrifices. Now what are those sacrifices?

In place of securities which had a direct lien for the most part on the entire property, subject only to the undisturbed bonds, a lien which protected both principal and annual interest, these defaulted bondholders are to receive 20 per cent in the same 50-year 5 per cent bonds in which the stockholders are required to invest and 80 per cent in adjustment-mortgage bonds which are the equivalent of prior preferred stock. They are also to permit two new mortgages to be created, both of which are to be superior in lien to the adjustment mortgage and one of which is to be junior only to the undisturbed bonds and is to be subject to no limitation on the amount of bonds which may be issued under it. One of these superior mortgages which they thus permit to be created is also to be used to secure the major part of the new money which the stockholders are to provide In other words this money is largely to be raised upon the strength of credit which the defaulted bondholders surrender. The latter further agree that up to $5,000,000 per year two-thirds of yearly net income may be diverted from the payment of interest on their new

adjustment bonds to capital expenditures, this interest not being cumulative until 1930.

The conclusion from these facts is inescapable that the sacrifice under the proposed reorganization plan is a sacrifice on the part of the holders of the defaulted bonds and that the stockholders, who were apparently wiped out by the foreclosure sale, are being restored to their original position with very little sacrifice.

I shall not undertake to discuss this situation from the standpoint of the legal rights of the defaulted bondholders, but rather from the standpoint of the public interest which we are enjoined by the statute to protect. Apparently such a reorganization is defended legally upon the ground that additional funds are essential to the success of the undertaking and "it may be impossible to obtain
164 them unless stockholders are permitted to contribute and retain an interest sufficiently valuable to move them." But it would seem that this defense can only apply when the bondholders are themselves unwilling to supply the additional funds, something which they have been given no opportunity to do. And plainly here the stockholders have been given inducement much more than "sufficiently valuable to move them." A further defense is that the bondholders, having acquired the property, are free to take in the stockholders on liberal terms if they think it expedient to do so. But such an argument disregards the rights of bondholders who do not agree, to say nothing of the manner in which the assent of the majority was procured.

Under the statute which we administer, however, we have no concern with these matters except to the extent that they have a bearing upon the public interest. From such a standpoint there is much to be said in favor of forbearance and generosity in the treatment of stockholders, especially where, as here, the stock has commanded high prices in the past and for the most part has beneath it an adequate margin of rate base value upon which the carrier is justly entitled to earn a reasonable return. It would be most unfortunate from the public viewpoint if they were to be wiped out.

But there is another and a very important side of the question from even this public point of view. If the Government is to assume, as it has assumed, the responsibility for the regulation of railroad security issues, it is assuredly vital to the economical financing of the properties and to the public interest generally that the Government should, to the extent of its power, see to it that investors are treated with absolute good faith, and that the rights attaching to their securities are adequately protected. I am unable to reach the conclusion that this has been done here.

In this connection it must be borne in mind that it is the stockholders, not the bondholders, who have been legally responsible for the management of the St. Paul in the past, and in so far as that management has been lax and has contributed to the financial downfall of the company, it is the stockholders who must shoulder the

blame. If stockholders are to realize and be alive to their legal responsibilities, they should be made to carry at least their appropriate share of the load when their company meets with disaster. There surely can be no justification for restoring them, with small sacrifice on their part, to a position in the new company of practically unimpaired power and security.

The principal answer made to this criticism of the reorganization plan is that the great majority of the bondholders have agreed to it. For the reasons which I have already given at some length, this apparent agreement is of no real weight. I direct attention again,
165 at this point, to the opportunities for manipulation and speculative profit which the stock affords in cases like this. Before disaster arrives the financially wise are forewarned and unload their holdings of stock. Upon the eve of receivership those with inside information have the opportunity to profit by selling stock short. In the days immediately following receivership they have an opportunity to buy again at very low prices. And to the extent that the stock is generously treated in the reorganization plan opportunities for great profits are opened. It is well nigh impossible to prove definitely and specifically that advantage has been taken of those various opportunities for manipulation and speculative profits by supporters of the reorganization plan; but as I have already shown we have here concrete evidence which points clearly in that direction. Let it be remembered that the 20 largest holders of the St. Paul stock are now brokerage houses representing unknown clients. If the generous treatment of the stock in the reorganization plan were to accrue largely to the benefit of the stockholders who bought long ago at par or better it would be one thing; but in fact it will accrue in very substantial part to the benefit of speculators who have acquired their holdings for a mere pittance.

It is also suggested that the plan should be judged in the light of the conditions prevailing when it was formulated. But under the statute we must pass upon it in the light of existing conditions.

As I understand their position, the majority of the commission are not here authorizing the desired securities because they regard all of the provisions of the reorganization plan with favor. On the contrary it is made quite clear in the final paragraphs of the report on the general investigation of St. Paul affairs that they recognize the "obvious shortcomings" of the plan. They find themselves faced with the alternatives of either approving a poor plan or compelling the negotiation of new agreements with the likelihood of further considerable delay and expense in taking the railroad out of receivership. In this dilemma they choose approval of the plan as the lesser evil in the public interest. Such a conclusion, it seems to me, is ill-considered. This is not the first time that the commission has approved reorganization plans upon such a theory, and in at least two instances there have been successive reorganizations of the same property. The need for a more positive policy is clearly indicated.

The effect upon the country of a rejection of this plan would be tonic. Moreover I believe that reasonable changes in the plan could and would be made without undue difficulty. But even if delay ensued, it would be no dire misfortune for the property to remain a little longer in receivership. It has so far been much improved during the receivership, and doubtless this improvement would continue

166 An alternative plan.—Having undertaken to criticize the proposed reorganization plan I ought in fair play to suggest an alternative, although the action of the majority has made such a suggestion a work of supererogation. This alternative I shall merely outline broadly without attempting under the circumstances to fill in the details. It undertakes to give effect to the following principles: (1) Provide a structure under which financing will be possible through stock as well as bond issues, even if the earnings do not prove as favorable in the future as it is hoped that they will be; (2) give the form of stock with voting power to all securities the return on which is dependent upon income; (3) require the least sacrifice upon the part of creditors which will satisfy the demands of the public interest.

I have not undertaken in this plan to deal with minor controversies between security holders, such as the question as between the general and refunding bonds and the Puget Sound bonds. These controversies do not, I think, affect the public interest sufficiently to merit consideration by this commission. The undue liberality to the stockholders in contrast with the bondholders, on the other hand, is of major importance. In the plan, however, I have endeavored to leave the stockholders in a position which preserves their equity in the property and assures them of adequate compensation if the carrier proves able in the future to earn the fair return to which it is justly entitled upon property value.

Stated in the order of priority the new securities under the alternative plan would be as follows:

	Par value
Undisturbed bonds, including $22,129,000 of guaranteed Terre Haute bonds	$182,130,960
First and refunding mortgage, no bonds to be issued thereunder at present but to be available with limitation for future financing	----------
Prior preferred stock, none to be issued at present but to be available without limitation for future financing, dividend rates on particular issues to be fixed as circumstances may require	----------
First preferred stock, 5 per cent, open for further issues, at other dividend rates if necessary	289,268,787
Second preferred stock, 5 per cent, but if noncumulative sharing with common stock in dividends at a higher rate	118,845,800
Common stock	75,000,000

Of the first preferred stock, $228,592,115 would go to the defaulted bondholders and $60,676,672 to the stockholders in return for their cash contributions. If it were thought desirable, the defaulted bondholders could, without serious impairment of the plan, be given 30 per cent in prior preferred stock and 70 per cent in first preferred, instead

of 100 per cent in the latter. Under the plan set forth above, however, it is quite possible that this first preferred stock
167 would provide for future financing and that issues of the prior preference stock would not be necessary. The second preferred stock would go to the present preferred stockholders, with the exception of the $3,000,000 for the director general, and the common stock to the present common-stock holders. I have reduced the amount of common stock to $75,000,000, because the evidence as to property value now before us does not fully support a larger issue. This would not be a matter of serious consequence to the common-stock holders, however, for the value of their equity and the amount that they may receive in dividends would in any event be determined by future earnings and whatever property value is finally determined. Some adjustment would probably be necessary on account of defaulted interest on bonds which the plan approved by the majority covers to the extent of 20 per cent, and also on account of unsecured creditors. These, however, are among the details which it seems unnecessary under the circumstances to work out. The same may be said of possible limitations on the voting rights of certain classes of the stock, and of the extent to which the preferred dividends should be made cumulative. No doubt dividends on the prior preferred stock should be cumulative, and probably dividends on the first preferred after 1930.

It remains to add a word as to present custom and practice with respect to the formulation of reorganization plans. The present case is illustrative. The evidence shows that for many years the St. Paul conducted all of its financial operations through Kuhn, Loeb & Company, and later through that firm and the National City Company, at great profits to the bankers, particularly in the case of one indefensible transaction which is fully described in the report in the general investigation. The bankers now disclaim responsibility for the financial structure of the company, but whatever may have been their rôle in the past, during the months which immediately preceded the receivership they were clearly the dominant power. It was they who precipitated the receivership, it was they who seem to have selected at least one of the receivers, it was they who immediately thereafter had themselves constituted reorganization managers, it was they who named the chairmen of the committees formed for the ostensible purpose of protecting the interests of the bondholders and stockholders, and it is they who are to name the directors of the new company.

This impresses me as being an arbitrary and irresponsible method of effecting a reorganization and developing a plan therefor. Certain principles suggest themselves:

(a) The public interest should be adequately represented, not in the final stage only, but from the beginning.

168 (b) Bankers and lawyers must be employed to assist in the preparation of the plan, but they ought not to dominate

its preparation. They should be employed as expert advisers upon a strictly professional and nonspeculative basis.

(c) Committees should be appointed to protect the interests of the various classes of security holders, but those committees should be selected at meetings of the security holders called for the purpose and ought not to be selected by the reorganization managers themselves or by other outside volunteers.

(d) The reorganization managers should be wholly impartial and neutral, not affiliated with any group of security holders nor with any particular group of bankers.

(e) The plan should be submitted to the commission for its approval before the security holders are asked to assent to it, and an opportunity should be afforded for the presentation of protests at a public hearing.

(f) There should be no divided jurisdiction, and for that reason the courts should not be required to pass upon questions which have been or are to be determined by the commission, nor vice versa.

In the report in the general investigation the commission recommends a method of satisfying the principle stated in paragraph (e) above, and it would also improve the situation with respect to paragraph (a). This is an important and desirable step, but I doubt whether it will adequately meet the situation. These questions are of great public importance, and they invite and should have full and free discussion. The principles above suggested are set forth in the hope that they will aid in such discussion.

I am authorized to say that CHAIRMAN CAMPBELL and COMMISSIONER MCMANAMY join in this dissent.

LEWIS, Commissioner, dissenting:

We are dealing here with a property of undetermined value for reorganization purposes. It is true that an analysis based on application of methods adopted by us in the O'Fallon recapture case produces a value of some $640,000,000. While this estimate was made by a witness for applicant, it was presented, it seems, merely as indicating a minimum value. However, an "O'Fallon method" value would be only for purposes of rate making and recapture. We have recognized that there are other values and in this instance we have confirmation of the fact. We have $140,000,000 plus $182,130,960 of assumed underlying obligations, or $322,130,960, the price at which the court releases the property. And still this foreclosure sale price paid for relief of creditors, obviously does not measure the value of the property. The stock market's current quotations for various
169 securities "when issued" indicates an appraisal of $530,000,000; and there is every indication that that appraisal has in it a considerable bull element, for there has been much speculation in these securities.

Against these properties the majority gives governmental sanction to assumption and issuance of $708,651,549 of securities. This state-

ment of total, however, is subject to criticism, for it includes at $100 par the 1,174,060 shares of no-par common stock which is to take the place of $117,406,000 of common stock of the old company. I shall refer to this later.

What can be accepted as a sound basis of value for reorganization purposes? I can not conceive that it was the intent of Congress which requires us both to regulate securities and to value properties that in exercising the first of these powers we should not bear in mind the fact of value. This is very clearly indicated in the consolidation sections of the act for there it is stipulated that value shall place the limit on securities that may be authorized. The answer to the question of what is a reasonable guide in this instance seems to lie in earning power, that is, ability to meet obligations created by securities which the Government through its agent authorizes to be issued on this property as it comes out of receivership; also ability to finance future needs of capital. Here we are turned back to the cold record of performance, and have the privilege of looking reasonably into the future. The net railway operating income over the last 15½ years has been as follows:

Year ended—		Year ended—	
June 30, 1912	$18,360,676	Dec. 31, 1920 (deficit)	$14,497,698
June 30, 1913	27,580,419	Dec. 31, 1921	3,117,937
June 30, 1914	27,437,810	Dec. 31, 1922	13,284,245
June 30, 1915	25,198,955	Dec. 31, 1923	20,167,713
June 30, 1916	30,894,237	Dec. 31, 1924	18,972,106
Dec. 31, 1916	30,896,302	Dec. 31, 1925	16,873,636
Dec. 31, 1917	21,657,112	Dec. 31, 1926	18,394,606
Dec. 31, 1918	4,100,267		
Dec. 31, 1919	1,969,322		

It should be explained that these figures are intended to cover for all the years the mileage included in the operating figures in the last year so far as that mileage was in existence in the earlier years. For example, the income of the Chicago, Terre Haute & Southeastern is included in all the years though not leased by the St. Paul until 1921.

While the span covered by the above summary of net includes the pre-war period, the changes have been so fundamental as to make it of little value in reaching a conclusion, though there may be those who may argue from the showing of more favorable net up to 1918
that there is reason to believe that the properties under proper
170 management should return to earnings once enjoyed. Likewise there should be dropped the period of depression which culminated in the deficit of $14,497,698 in 1920. The new period would seem to date from the readjustment of freight rates following the return of carriers to private control, which is reflected in a difference of $17,500,000 between 1920 and 1921. It might be observed that the new period beginning in 1920 marked a decided change also in general conditions in this country in which

the section served by the St. Paul does not seem to have fared as well as the fast-growing cities, the South, and the two coastal regions. This is one of the facts that should be borne in mind in forecasting future earning abilities of the reorganized St. Paul.

While there have been fluctuations, the net has shown a tendency to balance on the $18,000,000 line. The year 1923 was a big year for all roads, and the St. Paul scored a peak of more than $20,000,000 but there was a drop the next year, a sag the next, and 1926 fell below both 1923 and 1924. This case was presented on the basis of an optimistic outlook on the future. We have closed a year of that future and have reports covering the first 11 months. The gross was $150,459,521 as compared with $148,107,540 in the same months of 1926. Expenses went up from $117,967,081 to $122,194,345. This, together with an increase of $2,385,485 expenditures on maintenance, resulted in $14,088,606 net as compared with $17,532,653 for the same period in 1926. Net of $2,281,268 for December, 1925, and $862,280 for December, 1926, indicate that the year 1927 will show between $15,000,000 and $16,000,000 less than any year since 1922. The fact must be recognized that the St. Paul's showing is depressed to the extent that the receivers have been carrying a maintenance program which is above normal for both the St. Paul and the section in which it operates and which has contributed greatly to the condition of the road and service during receivership.

The new company is authorized by the majority to appear in the field of public service with a financial structure carrying $13,663,489 of fixed interest charges. The earnings seem to cover that with a margin of safety. There then appears in the picture of that future which begins with the year 1930, less than two years distant, $9,143,685 of adjustment-mortgage bond-interest charges. This annual liability which attaches to the $182,873,693 of adjustment bonds falls just outside the technical designation of fixed charges because interest is to be paid only when earned. It, however, is fixed and cumulative, and is senior to claims of stock to participation in any earnings; and before stock can participate there also is provision for diversion of earnings to capital account.

171 So the analysis comes down to $22,807,174 annual liabilities and obligations ahead of stock. This is a million and a quarter greater total interest charges than accruing under the old financial burden on which the St. Paul went into receivership. Is this a safe plan to approve?

Submitting the conditions of the new St. Paul to a favorable analysis and accepting the fact that maintenance expenditures can be cut and that new management should bring or create new business, and indulging in the sanguine hope that there will be a healthy reversal of adverse conditions, there is little hope of the company being able to do more than meet its fixed charges and contingent cumulative obligation within any reasonable time. Therefore it seems that the stock, both preferred and common, is destined to nothing more than stock-market speculation for some time to come.

With stocks that have only such value, the St. Paul must look to bond issues for new money which from almost the beginning of the new company's operations must flow to it. These issues probably must carry priorities over bonds authorized by the majority decision, except the $182,130,960 of undisturbed underlying bonds. The effect must be still further to crowd stock out of use in financing.

The tendency toward disproportionate issues of bonds as compared with stock, with all of the handicaps and evils resulting, which need not here be restated, must have been one of the reasons why Congress decided to regulate the securities of carriers. The act followed similar action by various States which specified that there be proper proportion of stocks and bonds. In this instance, however, the new St. Paul is authorized to start out with $288,526,056 of bonded debt, which applicant on brief stresses as being only 41 per cent of the $707,000,000 valuation set up by including the no-par stock at $100 face value, to which it demurs. If, however, these 1,174,060 shares are given a value of only the $4 assessment, then the bonded debt is raised to 48.5 per cent. If however, the $182,873,693 of adjustment-mortgage bonds, with their 5 per cent interest obligation contingent as to payment but cumulative, be looked upon as being what they are labeled, a "mortgage" obligation, then the ratio is raised to 66.67 bonds and 33.33 stock. However, if the no-par common stock is to be counted in at $4, then the bonds, at face, would represent 79.1 per cent of the total value of securities.

Take another basis of analysis: Of a so-called O'Fallon method value of $640,000,000 the $288,500,000 "bonded debt" would be 45
per cent of the value, and if the adjustment- mortgage bonds
172 be added, the ratio would be, bonds 73.65 per cent, stock 26.35 per cent (ratio of $471,399,749 to $640,000,000).

The new company is getting $9,300,000 for $115,845,800 face par value of preferred stock and 1,174,060 shares of no-par common stock. In this way the stockholders in the defunct St. Paul are let into the new company. Anyone who reads the report covering the investigation made into the causes of the St. Paul receivership, which is issued concurrently with this authorization of reorganization, must wonder just how these old stockholders get into the new company on the terms offered. It must be recalled that they lost their property by neglect, that is, failure to manage it. They were sold out clean in the foreclosure, which transferred from them "all lien, right, title, interest, and equity of redemption of the railway company to its creditors and stockholders." The bid-in price fell almost $120,000,000 short of netting a stockholder a cent. If the creditor bondholders favor letting the closed-out stockholders share in the new property it may be a question whether we should stand in the way of such magnanimity, if indeed it is true magnanimity. The record in this case and that of the investigation reveal some interesting conditions. First, inside stockholders unloaded their holdings, and this extended even to directors. The record on which we are here acting reveals great buying of these stocks and their holding in large

blocks by certain purchasers, and it further leads to the conclusion that, generally speaking, the stockholders in the old company took their sacrifice and that the stock in the new company goes to others than, taken as a whole, the stockholders of the old company. The "when issued" stocks had been bid up to approximately $75,000,000 by last July and now stand at more than $82,000,000 on market quotations of 25¾ for the common and 43½ for the preferred. Before the reorganization plan was announced these stocks were down to $3 to $3.50 for the common and $7.50 for the preferred, and such low value is given as the reason for the assessment of only $4 per share. The $80,000,000 or more millions to which the stocks have been carried on the market, however, indicates that there is capital to be realized by sale of stocks. The $9,300,000 is not designed for the purposes of the new company except to the extent of that which may be left over from reorganization expenses.

Applicant insists that under the statute our duty is to decide whether its proposals are "appropriate" in the public interest. This unrealized stock value also indicates that it is not appropriate; that the public interest will be better served by rejecting it and permitting another plan to be brought forth that will turn into the carrier's treasury the profits that seem to be destined to the pockets of those speculating in the stocks.

173 The time has come, and the opportunity is here, to require a financial structure that is sound beyond question, and an organization strengthened by at least some of the suggestions for safeguarding the mutual interests of the public and the carrier presented by the majority report, our report on the investigation into the receivership of the St. Paul and dissenting expressions. It seems to me that the act places on us the duty of requiring such a reorganization. It seems to me that we might well approve a financial structure in which fixed interest obligations might range from $13,663,489 up to $15,000,000 or $16,000,000 if that be necessary, but that on a record of past performance which shows that not since 1916 has this carrier had an earning which would clear it, we should not approve a plan which carries $22,807,174 of fixed and cumulative contingent interest liabilities. The record seems to indicate that the carrier would have the right to earn 6 per cent on something like $640,000,000 before recapture. That being the case, there would lie beyond the $15,000,000 or $16,000,000 of fixed annual interest, opportunity to develop a real equity represented by stocks, and permit the company to capitalize future needs by sale of stocks as well as bonds. Here was offered the opportunity to bring about a relationship between stocks and bonds, falling somewhere near a 50–50 ratio, or even 60 per cent bonds to 40 per cent stock.

All investigations indicate that the property and services have improved. Therefore, so far as the public interest is concerned there the reorganization plan simply because if it is rejected, or changed, seems to be no pressing need for us to be spurred on to approval of

it will take some time to prepare and submit a new plan, and get the road out of receivership.

APPENDIX A

Mortgages and equipment trusts subject to which the properties of the Chicago, Milwaukee & St. Paul Railway Company are to be acquired, and the amounts of securities outstanding thereunder

Mortgage dated June 10, 1880, made by the Milwaukee & Northern Railroad Company to Jesse Hoyt and Allen S. Apgar, trustees (Farmers' Loan & Trust Company, successor trustee), to secure extended 4½ per cent first-mortgage bonds due June 1, 1910, extended to June 1, 1934. Bonds outstanding	$2,117,000
Mortgage dated February 11, 1884, made by the Milwaukee & Northern Railroad Company to Samuel N. Hoyt and Allen S. Apgar, trustees (Farmers' Loan & Trust Company, successor trustee), to secure extended 4½ per cent consolidated-mortgage bonds due June 1, 1913, extended to June 1, 1934. Bonds outstanding	5,072,000
174 Mortgage dated July 1, 1886, made by the St. Paul to the Farmers' Loan & Trust Company to secure Chicago & Missouri River Division first-mortgage bonds due July 1, 1926. Bonds outstanding[1]	3,083,000
Mortgage dated May 1, 1889, made by the St. Paul to the United States Trust Company of New York, trustee, to secure general-mortgage bonds due May 1, 1989. Bonds outstanding	99,788,000
Mortgage dated December 2, 1901, made by the Bellingham Bay & British Columbia Railroad Company to the Mercantile Trust Company of San Francisco, trustee, to secure first-mortgage 5 per cent gold bonds due December 1, 1932. Bonds outstanding	439,000
Trust indenture dated January 1, 1924, made by the St. Paul to the National City Bank of New York, trustee, to secure 10-year 6 per cent first-mortgage bonds, security gold loan of 1924, due January 1, 1934. Bonds outstanding	14,000,000
Equipment-trust agreement dated January 15, 1920, between the Director General of Railroads, the St. Paul, and the Guaranty Trust Company of New York, trustee, to secure equipment gold notes. Notes outstanding	9,859,500
Equipment-trust agreement dated July 15, 1922, between certain vendors, the St. Paul, and the Metropolitan Trust Company of the City of New York to secure equipment-trust 5 per cent gold certificates, series A. Certificates outstanding	6,468,000
Equipment-trust agreement dated February 1, 1923, between certain vendors, the St. Paul, and the Commercial Trust Company, of Philadelphia, trustee, to secure equipment-trust 5 per cent gold certificates, series B. Certificates outstanding	1,152,000
Equipment-trust agreement dated April 1, 1923, between certain vendors, the St. Paul, and the Bank of North America & Trust Company, of Philadelphia, Pa., trustee, to secure 5½ per cent equipment-trust certificates, series C. Certificates outstanding	10,800,000
Equipment-trust agreement dated August 1, 1925, between certain vendors, the receivers of the St. Paul, and the Bank of North America & Trust Company, of Philadelphia, trustee, to secure 5 per cent equipment-trust certificates, series D. Certificates outstanding	9,270,000
Equipment lease dated April 30, 1927, between the Pullman Car & Manufacturing Corporation and the receivers of the St. Paul under which were issued promissory notes to evidence deferred rentals. Notes outstanding	1,349,960
Total	163,398,460

[1] Since refunded by general-mortgage bonds; see 124 I. C. C. 469.

Securities or mortgages in respect of which the Chicago, Milwaukee, St. Paul & Pacific Railroad Company seeks authority to assume obligation and liability

Security	Company	Amount
To be assumed pursuant to a lease dated July 1, 1921, between the Chicago, Terre Haute & Southeastern Railway Company, and the St. Paul:		
5 per cent first-mortgage gold bonds	Bedford Belt Railway Company	$250,000
4 per cent first-mortgage gold bonds	Southern Indiana Railway Company	7,287,000
5 per cent first and refunding mortgage gold bonds.	Chicago, Terre Haute & Southeastern Railway Company.	8,256,000
Income-mortgage gold bonds	do	6,336,000
To be assumed pursuant to an agreement dated December 31, 1921, between the St. Paul and St. Louis Union Trust Company:		
40-year 5 per cent gold bonds	Chicago, Milwaukee & Gary Railway Company.	3,000,000
To be assumed pursuant to agreements dated June 12, 1909, and January 24, 1910, between the St. Paul and other proprietary companies, Kansas City Terminal Railway Company, and Illinois Trust & Savings Bank. St. Paul's proportion 8⅓ per cent:		
4 per cent gold-mortgage bonds	Kansas City Terminal Railway Company.	50,000,000
To be assumed pursuant to agreement dated December 18, 1916, and supplemental indenture dated November 2, 1923, between the St. Paul and other proprietary companies and the St. Paul Union Depot Company, St. Paul's proportion 11⅓ per cent:		
First and refunding mortgage bonds	St. Paul Union Depot Company	15,000,000
First-mortgage 6 per cent bonds	do	250,000
Consolidated-mortgage 5 per cent bonds	do	150,000
Consolidated-mortgage 4 per cent bonds	do	100,000
To be assumed pursuant to agreement dated July 2, 1915, and supplemental agreements dated February 1, 1919, and December 1, 1924, between the St. Paul and other proprietary companies, Chicago Union Station Company, and Illinois Merchants Trust Company. St. Paul's proportion 25 per cent:		
First-mortgage bonds	Chicago Union Station Company	60,000,000
5 per cent guaranteed gold bonds	do	7,000,000
To be assumed pursuant to an agreement dated April 13, 1911, between the St. Paul, Chicago & North Western Railway Company, Michigan Central Railroad Company, and Lake Shore & Michigan Southern Railway Company. St. Paul's proportion 20 per cent:		
General-mortgage 4 per cent bonds	Indiana Harbor Belt Railroad Company.	4,225,000
General-mortgage 4½ per cent bonds	do	5,000,000
To be assumed pursuant to the by-laws of Minnesota Transfer Railway Company in which company the St. Paul was a stockholder. St. Paul's proportion 11⅓ per cent:		
First-mortgage 5 per cent bonds	Minnesota Transfer Railway Company.	2,180,000

Schedule of participation in distribution of new securities by holders of existing securities participating in the plan

Existing securities [1]		Cash adjustment of interest from preceding interest date to Feb. 1, 1925		New 50-year 5 per cent mortgage gold bonds		New 5 per cent adjustment-mortgage bonds		New preferred stock		New common stock	
Description	Amount [2]	Per $1,000 bond	Total amount	Per cent	Amount	Per cent	Amount	Per cent	Amount	Per cent	Amount
											Shares
European loan bonds	$11,831,515	$6.66⅔	$78,877	20	$2,366,303	80	$9,465,212				
4 per cent bonds, due 1925	35,100,000	6.66⅔	234,000	20	7,020,000	80	28,080,000				
4½ per cent bonds, due 1932	49,980,800	7.50	374,856	20	9,996,160	80	39,984,640				
4 per cent bonds, due 1934	33,286,000	3.33⅓	110,953	20	6,657,200	80	26,628,800				
C., M. & P. S. bonds	26,175,000	3.33⅓	87,250	20	5,235,000	80	20,940,000				
Refunding bonds, series A	43,089,000	15.00	646,335	20	8,617,800	80	34,471,200				
Refunding bonds, series B	29,129,800			20	5,825,960	80	23,303,840				
Total	228,592,115		1,532,271		45,718,423		182,873,692				
Preferred stock	115,845,800			24	27,802,992			100	$115,845,800		
Common stock	117,406,000			28	32,873,680					100	1,174,060
Total	233,251,800				60,676,672						
Grand total	461,843,915		1,532,271		106,395,095		182,873,692		115,845,800		1,174,060

[1] Not including the notes of the railway company held by the United States Government or general claims against the railway company.

[2] Not including stocks and bonds in the so-called insurance fund of the railway company which are not outstanding and are to be canceled. Amounts of bonds are as found by the final decree of foreclosure and sale to be entitled to the security of the respective mortgages, except in the case of the European loan bonds. The European loan bonds are payable, at the option of the holders, in French francs or English pounds sterling and are taken into the above table at the rate of exchange stipulated for conversion into 4 per cent bonds, due 1925. The final decree of foreclosure and sale shows $11,807,276.03 (instead of $11,831,515) of European loan bonds based upon rate of exchange of English pounds sterling on the date of maturity of the bonds.

177 *Comparative table showing capitalization and interest charges (giving effect to contingent interest and, beginning 1936, contingent sinking-fund charges), figures as of June 30, 1927*

	Before reorganization		Giving effect to reorganization			
	Capitalization	Interest charges	Capitalization	Fixed interest charges	Contingent interest charges	Contingent sinking-fund charges (beginning 1936)
Undisturbed bonds	$182,130,960	$8,343,734	$182,130,960	$8,343,734		
Notes held by U. S. Government to be liquidated	55,000,000	3,300,000				
Bonds to be exchanged	228,592,115	9,900,332				
50-year 5 per cent mortgage gold bonds			106,395,096	5,319,755		$225,000
Adjustment-mortgage bonds			182,873,693		$9,143,685	914,368
Preferred stock	115,845,800		[1] 118,845,800			
Common stock	117,406,000		[2] 117,406,000			
Total	698,974,875	21,544,066	707,651,549	13,663,489	9,143,685	1,139,368

[1] This amount includes $3,000,000 of preferred stock to be issued on account of $20,000,000 note held by the United States Government. It does not include the preferred stock to be applied in settlement of general claims against the railway company, which is undetermined but which is estimated at not to exceed $2,000,000.

[2] Taking no-par-value common stock at $100 per share.

CERTIFICATE AND ORDER

(Issued January 4, 1928)

A hearing and investigation of the matters and things involved in this proceeding having been had, and the commission having, on the date hereof, made ad filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is hereby certified, That the present and future public convenience and necessity require the acquisition and operation by the Chicago, Milwaukee, St. Paul & Pacific Railroad Company of the lines of railroad formerly owned and/or operated by the Chicago, Milwaukee & St. Paul Railway Company, described in subdivisions A, B, C, and D of Schedule VI of the application.

It is ordered, That the Chicago, Milwaukee, St. Paul & Pacific Railroad Company when filing or adopting schedules establishing rates applicable on such lines of railroad shall in such schedules refer to this certificate by title, date, and docket number.

It is further ordered, That the acquisition by the Chicago, Milwaukee, St. Paul & Pacific Railroad Company of control (1) of the Chicago, Terre Haute & Southeastern Railway Company by purchase of its capital stock and by lease; and (2) of the Chicago, Milwaukee & Gary Railway Company, Davenport, Rock Island & Northwestern Railway Company, White Sulphur Springs & Yellow-
178 stone Park Railway Company, Indiana Harbor Belt Railroad Company, Minnesota Transfer Railway Company, Minneapolis Eastern Railway Company, Chicago Union Station Company, St. Paul Union Depot Company, Kansas City Terminal Railway

Company, and Des Moines Union Railway Company by purchase of all or fractions of their capital stock, which capital stock is part of the properties and assets purchased at the foreclosure sale and is to be assigned to the applicant pursuant to the agreement dated April 11, 1927, between the applicant, Robert T. Swaine, Donald C. Swatland, and others, be, and the same is hereby, approved and authorized.

It is further ordered, That, for the purposes set forth in the application and in the report aforesaid, the Chicago, Milwaukee, St. Paul & Pacific Railroad Company be, and it is hereby, authorized to issue in either temporary and/or definitive form, and in the first instance in respect of all bonds as scrip certificates, (1) 1,174,060 shares of common stock without nominal or par value, and $119,845,800 of preferred stock, consisting of 1,198,458 shares of the par value of $100 each, and from time to time such additional amounts of stock up to 914,369 shares of common and $91,436,900 of preferred as necessary to effect the conversion into stock of the 5 per cent convertible adjustment-mortgage bonds hereinafter authorized; (2) not exceeding $106,395,096 of 50-year 5 per cent mortgage bonds, series A, B, or C, of any series, one or more, under and pursuant to, and to be secured by a proposed 50-year 5 per cent mortgage to be made by the applicant under date of February 2, 1925, to the Guaranty Trust Company of New York and Merrel P. Callaway, as trustees; said bonds to be dated February 2, 1925, to be in the form, denominations, payable in the respective currencies, and redeemable as provided in the mortgage, to bear interest at the rate of 5 per cent per annum, payable semianually on February 1 and August 1 in each year, and to mature February 1, 1975; and (3) not exceeding $182,873,693 of 5 per cent convertible adjustment-mortgage bonds, series A, B, or C, of any series, one or more, under and pursuant to, and to be secured by, an adjustment mortgage to be made by the applicant under date of February 2, 1925, to the National City Bank of New York and William W. Hoffman, as trustees; said bonds to be dated February 2, 1925, to be in the form, denominations, payable in the respective currencies, and redeemable as provided in the mortgage, to bear interest up to 5 per cent per annum, and to mature January 1, 2000: Provided, however, and the authority herein is granted upon the express conditions, that the applicant (a) shall not pay any underwriting fees in connection with the proposed issue of securities; and (b) shall impound in a separate fund the money received
179 from the payment by holders of preferred and common stock in an amount equal to $4 a share, which shall not be paid out unless and until so authorized by order of the court in respect to payments subject to the court's jurisdiction or by this commission.

It is further ordered, That, except as herein authorized, said stocks and bonds shall not be sold, pledged, repledged, or otherwise disposed of by the applicant, unless and until so ordered by this commission.

It is further ordered, That the Chicago, Milwaukee, St. Paul & Pacific Railroad Company be, and it is hereby, authorized to assume, as purchaser of the properties formerly of the Chicago, Milwaukee & St. Paul Railway Company, (1) obligation and liability in respect of the mortgages and equipment-trust agreements and leases and of the securities issued and outstanding thereunder, subject to which said properties are to be acquired by the applicant, as set forth in the application and in Appendix A to the report aforesaid, and (2) in respect of the bonds of the several companies and in the respective amounts given in Appendix B to the report aforesaid, said assumption to be pursuant to the terms of the instruments indicated in said appendix.

It is further ordered, That within 10 days after the execution by the applicant of the first and refunding mortgage, 50-year 5 per cent mortgage, and adjustment mortgage, certified copies thereof shall be filed with this commission.

It is further ordered, That the applicant shall report concerning the matters herein involved in conformity with the commission's order dated February 19, 1927, respecting applications filed under section 20a of the interstate commerce act.

It is further ordered, That nothing herein shall be construed to imply any guaranty or obligation as to said stocks and bonds, or dividends or interest thereon, on the part of the United States.

It is further ordered, That jurisdiction of this proceeding be, and it is hereby, reserved by this commission for the purpose of taking further testimony as to the expenses of the reorganization, the nature and scope of services performed in connection therewith, and of any other matters pertinent thereto, and for the entry of such further orders as may be appropriate in the premises.

And it is further ordered, That so much of the application as requests authority to issue general-mortgage 5 per cent gold bonds, series D, be, and it is hereby, denied, without prejudice.

By the commission.

[SEAL.] GEORGE B. MCGINTY,
Secretary.

180 *Exhibit E to petition*

Before the Interstate Commerce Commission. Finance Docket No. 6240

SUPPLEMENTAL APPLICATION

Chicago, Milwaukee, St. Paul and Pacific Railroad Company (hereinafter called the applicant) respectfully shows to the commission as follows:

1. The applicant is advised that the amounts to be paid by the stockholders of Chicago, Milwaukee and St. Paul Railway Company under the plan and agreement of reorganization dated June 1, 1925, as modified November 19, 1925 (hereinafter called the reorganization plan), as a condition of participating in the reorganiza-

tion under the reorganization plan, have been called for payment on or before February 16, 1928, and that such stockholders have the option of paying one-half of the amounts required on such date, and the balance on or before June 1, 1928, with interest on the deferred instalment at the rate of 6% per annum.

2. It is necessary and desirable that, from time to time, such sums out of the payments received from the stockholders as are not required for payment of the expenses of the reorganization, should be made available to the treasury of the applicant for its corporate purposes and for the purposes of the reorganization plan, other than the expenses of the reorganization.

3. From time to time during the course of the reorganization there have been incurred, and from time to time hereafter
181 there will be incurred, various out-of-pocket expenses which the applicant is obligated to reimburse or pay, including, among other things, expenses in connection with—

(a) Preparation of certificates of deposit and listing certificates of deposit on the New York Stock Exchange;

(b) Printing the reorganization plan, deposit agreements, notices, and circulars relating to the deposit of securities, and the issue of new securities, articles of organization, by-laws, new mortgages, petitions, and briefs before the courts and the commission and other documents;

(c) Advertising notices explanatory of the plan and relating to the deposit of securities and the issue of new securities;

(d) Traveling expenses;

(e) Postage;

(f) Telephone and telegraph tolls;

(g) Extra stenographic services;

(h) Organization, franchise, qualification, transfer, and recording taxes and other taxes and Government charges in connection with the organization of the new company, its acquisition of the lines of railroad formerly of Chicago, Milwaukee and St. Paul Railway Company, the issue and transfer of its securities and the recordation of its new mortgages;

(i) Engraving and printing new bonds, stock certificates, and voting trust certificates, and the use of signograph machines to sign the new securities;

(j) Listing new securities on the New York Stock Exchange, etc.

There is filed herewith, marked "Exhibit A" and made a part hereof, a statement of such out-of-pocket expenses actually expended to date or incurred as are definitely known. The amounts expended to date have been advanced by the reorganization managers. There is included in Exhibit A an estimate of the approximate amount of the additional out-of-pocket expenses for certain foregoing items, the exact amount of which will necessarily depend upon the length of time it takes to complete the details of the reorganization.

182 As to certain of the foregoing items, it is difficult at this time even to estimate the exact amount which will be required.

For example, the amount of the mortgage recording taxes in certain states can only be determined after a hearing before the taxing authorities in such states in connection with the recordation of the mortgages; also the amount of the qualification tax to be paid by the applicant in certain states can not be determined except in connection with the filing of its next annual report to such states. The determination of these items will require a settlement with the state authorities as to the proportion of the properties of the applicant situated within the respective states and, when so determined, will be the charge fixed by the applicable statutes of the several states.

It is necessary and desirable that the applicant be in position to pay promptly from time to time, out of any moneys received from the payments by the stockholders, the various out-of-pocket expenses incurred and to be incurred in connection with the reorganization.

Wherefore, the applicant requests the commission—

1. To authorize the applicant to use for any corporate purpose of the applicant, other than the expenses of the reorganization, such sum or sums out of any moneys received from the payments to be made by stockholders of Chicago, Milwaukee and St. Paul Railway Company, as shall not be needed for the expenses of the reorganization; and

2. To authorize the applicant to pay, from time to time, out of any moneys received from the payments made by stockholders of Chicago, Milwaukee and St. Paul Railway Company (a) the amounts of all out-of-pocket expenses expended or incurred to date shown on Exhibit A, with interest on any amounts heretofore advanced for such purpose, (b) such additional amounts not exceeding, without further order of the commission, the estimated additional
183 amounts required for the items specified on Exhibit A, and (c) all amounts which may be or become payable for taxes or governmental charges in connection with the organization of the applicant and its qualification in the States in which it is engaged in business, or in connection with its acquisition of the lines of railroad formerly of Chicago, Milwaukee and St. Paul Railway Company, the issue and transfer of its securities and the recordation of its new securities.

The applicant will make such further application or applications, if any, with respect to matters dealt with in the commission's order and not covered hereby as from time to time may be necessary or proper.

CHICAGO, MILWAUKEE, ST. PAUL AND
PACIFIC RAILROAD COMPANY,
By JOSEPH H. REAM,
Vice-President.

STATE OF NEW YORK,
County of New York, ss:

Joseph H. Ream being duly sworn, deposes and says that he is a vice president of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, the applicant named in the foregoing application; that he has read the foregoing petition; and that the facts therein stated are true to the best of his knowledge and belief.

JOSEPH H. REAM.

Sworn to and subscribed before me this 26th day of January, 1928.

[NOTARIAL SEAL.] FREDERICK N. EDWARDS,
Notary Public, New York County.

My commission expires March 30, 1928.

184 EXHIBIT A

Statement respecting certain out-of-pocket expenses in connection with the reorganization of Chicago, Milwaukee and St. Paul Railway Company

Item	Expended or incurred to date	Estimated additional amount required
Preparation and listing of certificates of deposit	$65,429.98	$10,000
Printing	92,228.74	25,000
Advertising	134,641.94	25,000
Traveling	15,736.47	2,500
Postage (including registry and insurance)	2,593.33	10,000
Telephone and telegraph tolls	4,269.14	1,000
Extra stenographic and clerical services	7,937.29	2,500
Organization, franchise, qualification, transfer, and recording taxes and other governmental fees and charges.	275,739.60	As finally determined in accordance with applicable Federal and State statutes.
Engraving and printing of new securities [1]	123,864.50	None.
Use of sinograph machines to sign new securities (at 1c. per signature).	.....	10,000
Listing new securities on New York Stock Exchange (at $120 per $1,000,000 face amount).	.....	63,400
Charges of corporate trustees for certifying new bonds	.....	Standard rate for such services.
Charges of transfer agent and registrar for registering trust certificates for new stock.	.....	Standard rate for such services.
Miscellaneous out-of-pocket disbursements for incidental purposes such as minute books, corporate seals, copies of stenographers' transcripts of testimony, etc., etc., and all other incidental expenses.	2,766.74	2,500
Expenses of Roosevelt bondholders committee for engraving certificates of deposit, stationery and printing, advertising, traveling expenses, postage, depositary and subdepositaries and registrar and other similar out-of-pocket disbursements.	68,373.91	.....
Expenses of Iselin stockholders committee for stationery and printing, advertising, traveling expenses, postage, and other similar out-of-pocket disbursements.	5,869.92	.....
	799,451.56	.....

[1] For the purpose of economy an extra supply of bonds and trust certificates were included in the original order to take care of transfers and exchanges.

185 *Exhibit F to petition*

Interstate Commerce Commission. Finance Docket No. 6240

CHICAGO, MILWAUKEE & ST. PAUL REORGANIZATION

Submitted January 27, 1928. Decided March 13, 1928

Previous order, 131 I. C. C. 673, modified so as to authorize the applicant to use and to pay various amounts of money from the fund to be created from the payments of $4 a share by the stockholders of the Chicago, Milwaukee & St. Paul Railway Company.

Joseph H. Ream for applicant.

Supplemental report of the commission

Division 4, Commissioners Meyer, Eastman, and Woodlock

By Division 4:

By our certificate and order in this proceeding dated January 4, 1928, we required that the applicant impound in a separate fund the money to be received from the payment by holders of St. Paul preferred and common stock in an amount equal to $4 a share and not to make any payments from that fund until so authorized by order of the court or by us.

On January 27, 1928, the applicant filed a supplemental application in which it states that it is advised that the amounts to be paid by the former stockholders of the St. Paul have been called for payment on or before February 16, 1928, with the option of paying
186 one-half of the required amount on that date and the remainder on or before June 1, 1928, with interest on the deferred installments at 6 per cent per annum.

The applicant represents (1) that it is necessary and desirable that, from time to time, there should be made available to the applicant for its corporate purposes and for the purposes of the reorganization plan, other than the expenses of the reorganization, such sums out of the payments to be made by the stockholders of the St. Paul as are not required for reorganization expenses; (2) that during the course of the reorganization there have been incurred various out-of-pocket expenses which the applicant is obligated to reimburse or pay, such as preparation of certificates of deposit and the listing of them on the New York Stock Exchange, printing of various kinds, advertising notices, traveling expenses, postage, telephone and telegraph tolls, extra stenographic services, organization, franchise, qualification, and other taxes and governmental charges in connection with the reorganization of the applicant, engraving and printing the new securities and voting trust certificates, and the listing of the new securities on the New York Stock Exchange. The amounts that have been expended to date have been advanced by the reorganization managers.

Besides the expenditures made, there will have to be made additional expenditures for the same purposes and also for taxes or gov-

ernmental charges incident to the organization of the applicant, its qualification in the States in which it is engaged in business, the issue and transfer of its securities and recordation fees. The applicant shows that there has been expended or incurred to date for the items above enumerated a total of $799,451.56, and it estimates that an additional $151,900 will be required for similar purposes.

Authority is sought (1) to use for any corporate purpose of the applicant, other than the expenses of the reorganization, such sums out of the payments to be made by the stockholders of the St. Paul
187 as shall not be needed for the expenses of the reorganization; and (2) to authorize the payment out of similar moneys of (a) out-of-pocket expenses, paid or incurred to date, with interest on any amounts heretofore advanced for those purposes, (b) such further amounts as may be necessary to meet the estimated additional out-of-pocket expenses, and (c) all amounts which may be or become payable for taxes or governmental charges in connection with the organization of the applicant and its qualification in the States in which it is engaged in business, the issue and transfer of its securities and the recordation thereof.

Included in the total expended or incurred to date are items of $68,373.91 for expenses of the Roosevelt bondholders committee, and $5,869.92 for expenses of the Iselin stockholders committee. From the present record we are not able to ascertain whether or not those two items should be paid from the fund aforesaid. We will therefore defer action on that part of the supplemental application and reserve for further hearing the question of paying such obligations from that fund.

An appropriate supplement order will be entered.

SUPPLEMENTAL ORDER

At a session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 13th day of March, A. D. 1928.

Finance Docket No. 6240

Chicago, Milwaukee & St. Paul reorganization

Further investigation of the matters and things involved in this proceeding having been had, and said division having, on the date hereof, made and filed a supplemental report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

188 It is ordered that the Chicago, Milwaukee, St. Paul & Pacific Railroad Company be, and it is hereby, authorized, from the fund to be furnished by the payment of $4 a share by the holders of the common and preferred stock of the Chicago, Milwaukee & St. Paul Railway Company (1) to use for its lawful

corporate purposes such sum or sums of money, other than for the expenses of reorganization, as shall not be needed for the reorganization expenses, and (2) to pay from time to time out of said fund (a) out-of-pocket expenses paid or incurred in an aggregate amount not exceeding $725,207.73, with interest on any amounts advanced for those purposes, (b) such additional amounts for estimated expenses of a like character, not exceeding $151,900, and (c) any and all amounts which may be or become payable for taxes or governmental charges in connection with the organization of the applicant, its qualification in the States in which it is engaged in business, and the issue and transfer of its securities and the recordation thereof.

It is further ordered that, so long as any expenditures are made or money used by the applicant under the authority herein granted, the applicant shall on or before the 15th day of each month file with this commission a duly authenticated report which shall show as to the transactions occurring in the preceding month (1) the amount of money received from said fund and used for applicant's corporate purposes, (2) the actual expenditures made or incurred and the particular purposes for which expended in lieu of the estimates given in the supplemental application, and (3) all amounts expended as authorized by subsection (c) of subdivision (2) in the preceding paragraph.

And it is further ordered that, except as hereby modified, said order of January 4, 1928, shall remain in full force and effect.

By the commission, division 4.

[SEAL.] GEORGE B. MCGINTY,
Secretary.

189 *Exhibit G to petition*

Before the Interstate Commerce Commission. Finance docket No. 6240

REPORT PURSUANT TO ORDER DATED MARCH 13, 1928

Chicago, Milwaukee, St. Paul and Pacific Railroad Company (hereinafter called the applicant) respectfully reports to the commission as follows:

1. Up to the close of business March 31, 1928, the applicant received, for its corporate purposes other than expenses of the reorganization, out of payments made by stockholders of Chicago, Milwaukee and St. Paul Railway Company under the plan and agreement dated June 1, 1925, for the reorganization of said railway company, as modified November 19, 1925 (hereinafter called the reorganization plan), the sum of $8,656,192.18 which will not be needed for reorganization expenses. Such sum has been and will be used by the applicant only for its corporate purposes, other than for expenses of the reorganization and will not be used for any reorganization expense.

2. The applicant is advised that, up to the close of business March 31, 1928, there had been paid out of payments made by such stock

holders under the reorganization plan the sum of $49,500,000 on account of the principal of the 6% notes of said railway company held by the United States Government, and that the reorganization managers have advanced the remaining $2,500,000 of the $52,000,000 cash payment to be made in respect of the principal of said notes under the reorganization plan and have completed the liqui-
190 dation of said notes. The applicant is also advised that subsequent to the making of such advance and up to the close of business March 31, 1928, the amount of such advance has been reduced by $800,000 out of subsequent payments made by such stockholders under the reorganization plan.

3. Up to the close of business March 31, 1928, the applicant received out of payments made by such stockholders under the reorganization plan the sum of $1,565,216.65, which it has used to pay the several amounts, aggregating $1,565,216.65, authorized to be paid by orders of the District Court of the United States for the Northern District of Illinois, Eastern Division, entered February 4, 1928, and March 29, 1928, in the cause therein pending entitled "Guaranty Trust Company of New York and Merrel P. Callaway, as trustees, against Chicago, Milwaukee and St. Paul Railway Company et al., defendants," consolidated cause in equity No. 4931, to the persons and corporations specified in said orders.

4. The applicant is also advised that, up to the close of business March 31, 1928, there have been paid out of payments made by such stockholdfers under the reorganization plan—

(a) The sum of $760,480.20 in payment of the various items of reorganization expense referred to in the above mentioned order, being the sum of $725,207.73 referred to therein, with interest in the case of amounts previously advanced from the dates of the respective advances:

(b) The sum of $131,156.73 in payment of various items of reorganization expenses of like character to the foregoing, on account of the estimated amount previously reported, to wit:

191 Item	Amount	
Telegraph and telephone tolls	297.94	
Use of Signograph machines to sign new securities	9,997.90	
Preparation of new securities[1]	20,005.00	
Printing	14,063.09	
Preparation and listing of certificates of deposit	4,956.99	
Advertising	$16,752.35	
		$66,073.27
Listing new securities on New York Stock Exchange		63,860.00
Miscellaneous		479.01
Traveling expenses		572.72
Extra stenographic services		171.73
Total		$131,156.73

[1] Due to the fact that the security holders participating in the reorganization presented their securities for exchange for new securities in smaller blocks than was anticipated, the new bonds covered by the item of $123,864.50, referred to in the applicant's supplemental application, dated January 26, 1928, included too few bonds of the denomination of $100 and $500. As a result, it has been necessary to procure an additional supply of bonds of such small denominations, with the result that there has been made available to the applicant a larger amount of $1,000 pieces for future issue in connection with transfers and exchanges of bonds.

5. The applicant is also advised that, up to the close of business March 31, 1928, there has been paid out of payments received from such stockholders under the reorganization plan the sum of $96,774.91 for stamp taxes and other governmental charges of the character referred to in the above mentioned order (in addition to the amount of such taxes and charges included in said sum of $725,207.73).

CHICAGO, MILWAUKEE, ST. PAUL AND
PACIFIC RAILROAD COMPANY,
By R. J. MARONY, *Vice-President.*

APRIL 11, 1928.

192 STATE OF NEW YORK,
County of New York, ss:

Robert J. Marony, being duly sworn, deposes and says that he is a vice president of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, the railroad company named in the foregoing report; that he has read said report; and that the facts therein stated are true to the best of his knowledge and belief.

R. J. MARONY.

Subscribed and sworn to before me this 11th day of April, 1928.

[NOTARIAL SEAL]

W. H. GAMBRELL,
Notary Public.

New York County.

Commission expires March 30, 1930.

193 *Exhibit H to petition*

Before the Interstate Commerce Commission. Finance Docket No. 6240

REPORT PURSUANT TO ORDER DATED MARCH 13, 1928. FOR PERIOD APRIL 1, 1928, TO APRIL 30, 1928

Chicago, Milwaukee, St. Paul and Pacific Railroad Company (hereinafter called the applicant) respectfully reports to the commission as follows:

1. From and after April 1, 1928, and up to the close of business April 30, 1928, the applicant received, out of payments made by such stockholders under the reorganization plan, the further sum of $4,053.27 (in addition to the sums referred to in paragraph 3 of said report of April 11, 1928) which it has used to pay certain charges aggregating $4,053.27, authorized to be paid by the order of the District Court of the United States for the Northern District of Illinois, Eastern Division, entered February 4, 1928, in the cause therein pending entitled "Guaranty Trust Company of New York and Merrel P. Callaway, as trustees, complainants, against Chicago, Milwaukee and St. Paul Railway Company et al., defendants," consolidated cause in equity No. 4931.

2. The applicant is also advised that from and after April 1, 1928, and up to the close of business April 30, 1928, there has been paid, out of payments made by such stockholders under the reorganization plan, the further sum of $15,889.67 (in addition to the sums referred to in paragraph 4 of said report of April 11, 1928) in payment of various items of reorganization expenses of like character to those specified in said paragraph 4 of said report, on account of the estimated amount of such expenses previously reported, to wit:

194 Item	Amount
Printing	$15.75
Postage	4,102.53
Preparation of new securities	2,350.00
Preparation of certificates of deposit	9,421.39
Total	15,889.67

3. The applicant is also advised that from and after April 1, 1928, and up to the close of business April 30, 1928, there has been paid, out of payments made by such stockholders under the reorganization plan, the further sum of $120,872.32 (in addition to the sums referred to in paragraph 5 of said report of April 11, 1928) for stamp, recording, and other governmental taxes and charges of the character referred to in the above-mentioned order.

4. The applicant further states that it has received bills for certain charges referred to in its supplemental application herein, dated January 26, 1928, which it is obligated to pay, to wit, the charges of the corporate trustees under the mortgages securing the bonds which the applicant was authorized to issue by the commission's order herein, dated January 4, 1928, and the charges of the transfer agent and registrar for the voting trust certificates issued pursuant to the reorganization plan, for services in connection with the certification and delivery of the original issue of such bonds and voting trust certificates as follows:

Guaranty Trust Company of New York, as corporate trustee under the mortgage and deed of trust dated as of February 2, 1925, securing the fifty-year five per cent mortgage gold bonds of the applicant for authenticating the original issue of fifty-year five per cent mortgage gold bonds of the applicant	$62,190.00
The National City Bank of New York, as trustee under the adjustment mortgage dated as of February 2, 1925, for authenticating the original issue of five per cent convertible adjustment mortgage gold bonds of the applicant	97,712.00
195 The New York Trust Company, as transfer agent for the voting trustees under the agreement dated December 31, 1927, between the owners of preferred stock and common stock of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, and Elihu Root, Frederick H. Ecker, Henry S. Pritchett, Samuel Rea, and W. D. Van Dyke, voting trustees, for signing and issuing the original issue of voting trust certificates in respect of preferred stock and common stock of the applicant	15,386.75
Central Union Trust Company of New York, as registrar for said voting trustees, for registering the original issue of voting trust certificates for preferred stock and common stock of the applicant	5,149.05

The applicant is advised that the above charges are in accordance with the standard scale of rates for like services in effect among trust companies and banks in New York City performing corporate trust and corporate agency functions, and the applicant requests the commission to authorize the applicant to pay the same out of any moneys received from the payments made by said stockholders under the reorganization plan.

CHICAGO, MILWAUKEE, ST. PAUL
AND PACIFIC RAILROAD COMPANY,
By R. J. MARONY, *Vice President.*

MAY 12, 1928.

196 STATE OF NEW YORK,
County of New York, ss:

Robert J. Marony, being duly sworn, deposes and says that he is a vice president of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, the railroad company named in the foregoing report; that he has read said report; and that the facts therein stated are true to the best of his knowledge and belief.

ROBERT J. MARONY.

Subscribed and sworn to before me this 12th day of May, 1928.

[NOTARIAL SEAL.] ROBERT SCHWEBEL,
Notary Public, Kings County.

Kings Co. clerk's No. 191, reg. No. 295. N. Y. Co. clerk's No. 394, reg. No. 0–379. Bronx Co. clerk's No. 49, reg. No. 3080–A. Queens Co. clerk's No. 503, reg. No. 1941. Certificate also filed in Richmond County. Commission expires March 30, 1930.

197 *Exhibit I to petition*

Before the Interstate Commerce Commission. Finance Docket No. 6240

REPORT PURSUANT TO ORDER DATED MARCH 13, 1928, FOR PERIOD MAY 1, 1928, TO MAY 31, 1928

Chicago, Milwaukee, St. Paul and Pacific Railroad Company (hereinafter called the applicant) respectfully reports to the commission as follows:

1. The applicant is advised that from and after May 1, 1928, and up to the close of business May 31, 1928, there has been paid out of payments made by the stockholders under the reorganization plan, the further sum of $592.52 (in addition to the sums referred to in paragraph 4 of the report of April 11, 1928, and paragraph 2 of the report of May 12, 1928) in payment of various items of reorganization expenses of like character to those specified in said paragraph 4 of said report of April 11, 1928, on account of the estimated amount of such expenses previously reported, to wit, for postage.

2. The applicant is also advised that from and after May 1, 1928, and up to the close of business May 31, 1928, there has been paid or received by the railroad company for payment, out of payments made by such stockholders under the reorganization plan, the further sum of $97,074.82 (in addition to the sums referred to in paragraph 5 of said report of April 11, 1928, and paragraph 3 of
198 said report of May 12, 1928) for stamp, recording, and other governamental taxes and charges of the character referred to in the above-mentioned order.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,
By ROBERT J. MARONY, *Vice President.*

JUNE 14TH, 1928.

STATE OF NEW YORK,
County of New York, ss:

Robert J. Marony, being duly sworn, deposes and says that he is a vice president of Chicago, Milwaukee, St. Paul and Pacific Railroad Company named in the foregoing report; that he has read said report; and that the facts therein stated are true to the best of his knowledge and belief.

ROBERT J. MARONY.

Subscribed and sworn to before me this 14 day of June, 1928.

[NOTARIAL SEAL] ROBERT SCHWEBEL,
Notary Public, Kings County.

Kings Co. clerk's No. 191, reg. No. 298. N. Y. Co. clerk's No. 49, reg. No. 3080–A. Queens Co. clerk's No. 503, reg. No. 1941. Certificate also filed in Richmond County. Commission expires March 30, 1930.

199 *Exhibit J to petition*

Before the Interstate Commerce Commission. Finance Docket No. 6240

REPORT PURSUANT TO ORDER DATED MARCH 13, 1928, FOR PERIOD JUNE 1, 1928, TO JUNE 30, 1928

Chicago, Milwaukee, St. Paul and Pacific Railroad Company (hereinafter called the applicant) respectfully reports to the commission as follows:

1. The applicant is advised that from and after June 1, 1928, and up to the close of business, June 30, 1928, there has been paid out of the payments made by stockholders under the reorganization plan the further sum of $161.50 (in addition to the sums referred to in paragraph 4 of the report of April 11, 1928, paragraph 2 of the report of May 12, 1928, and paragraph 1 of the report of June 14, 1928) in payment of various items of reorganization expenses of like character to those specified in said paragraph 4 of said report of April 11, 1928, on account of the estimated amount of such expenses previously reported, to wit, for postage.

2. The applicant is also advised that from and after June 1, 1928, and up to the close of business June 30, 1928, there has been paid, or received by the applicant for payment, out of payments made by such stockholders under the reorganization plan, the further sum of $5,673.38 (in addition to the sums referred to in paragraph 5 of said report of April 11, 1928, paragraph 3 of said report of
200 May 12, 1928, and paragraph 2 of said report of June 14, 1928) for stamp, recording, and other governmental taxes and charges of the character referred to in the above mentioned order.

CHICAGO, MILWAUKEE, ST. PAUL
AND PACIFIC RAILROAD COMPANY,
By R. J. MARONY, *Vice President.*

JULY 14, 1928.

STATE OF NEW YORK,
County of New York, ss:

R. J. Marony, being duly sworn, deposes and say that he is a vice president of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, the applicant named in the foregoing report; that he has read said report; and that the facts therein stated are true to the best of his knowledge and belief.

R. J. MARONY.

Subscribed and sworn to before me this 14th day of July, 1928.
[NOTARIAL SEAL.] ROBERT SCHWEBEL,
Notary Public, Kings County.

Kings Co. clerk's No. 191, reg. No. 158. N. Y. Co. clerk's No. 394, reg. No. 0–379. Bronx Co. clerk's No. 49, reg. No. 3000–A. Queens Co. clerk's No. 503, reg. No. 194. Certificate also filed in Richmond County. Commission expires March 30, 1930.

201 *Exhibit K to petition*

Before the Interstate Commerce Commission. Finance Docket No. 6240

REPORT PURSUANT TO ORDER DATED MARCH 13, 1928, FOR PERIOD JULY 1, 1928, TO JULY 31, 1928

Chicago, Milwaukee, St. Paul and Pacific Railroad Company (hereinafter called the applicant) respectfully reports to the commission as follows:

1. The applicant is advised that from and after July 1, 1928, and up to the close of business July 31, 1928, there has been paid, out of payments made by stockholders under the reorganization plan the further sum of $923.98 (in addition to the sums referred to in paragraph 4 of the report of April 11, 1928, paragraph 2 of the report of May 12, 1928, paragraph 1 of the report of June 14, 1928, and paragraph 1 of the report of July 14, 1928) in payment of various items of reorganization expenses of like character to those specified in said paragraph 4 of said report of April 11, 1928, on

account of the estimated amount of such expenses previously reported, to wit:

Item	Amount
Postage	$662.45
Extra stenographic services	168.00
Printing	58.08
Traveling expenses	35.45
Total	$923.98

2. The applicant is also advised that from and after July 1, 1928, and up to the close of business July 31, 1928, there has been paid, or received by the applicant for payment, out of payments made
202 by such stockholders under the reorganization plan, the further sum of $1,697.00 (in addition to the sums referred to in paragraph 5 of said report of April 11, 1928, paragraph 3 of said report of May 12, 1928, paragraph 2 of said report of June 14, 1928, and paragraph 2 of said report of July 14, 1928) for stamp, recording, and other governmental charges of the character referred to in the above mentioned order.

CHICAGO, MILWAUKEE, ST. PAUL
AND PACIFIC RAILROAD COMPANY,
By R. J. MARONY, *Vice President.*

AUGUST 14th, 1928.

STATE OF NEW YORK,
County of New York, ss:

R. J. Marony, being duly sworn, deposes and says that he is a vice president of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, the applicant named in the foregoing report; that he has read said report; and that the facts therein stated are true to the best of his knowledge and belief.

J. R. MARONY.

Subscribed and sworn to before me this 14th day of August, 1928.

[NOTARIAL SEAL.] L. G. WEIFFENBACH,
Notary Public, Bronx County.

Clerk's No. 25, register's No. 3064. Certificate filed in New York Co. Clerk's No. 320, register's No. 0-228. Commission expires March 30, 1930.

203 *Exhibit L to petition*

Before the Interstate Commerce Commission. Finance Docket No. 6240

REPORT PURSUANT TO ORDER DATED MARCH 13, 1928, FOR PERIOD AUGUST 1, 1928, TO AUGUST 31, 1928

Chicago, Milwaukee, St. Paul and Pacific Railroad Company (hereinafter called the applicant) respectfully reports to the commission as follows:

1. The applicant is advised that from and after August 1, 1928, and up to the close of business August 31, 1928, there has been paid

out of the payments made by stockholders under the reorganization plan the further sum of $6.13 (in addition to the sums referred to in paragraph 4 of the report of April 11, 1928, and in paragraph 1 of the report of May 12, 1928) authorized to be paid by the order of the District Court of the United States for the Northern District of Illinois, Eastern Division, entered February 4, 1928, in the cause therein pending entitled "Guaranty Trust Company of New York and Merrel P. Callaway, as trustees, complainants, against Chicago, Milwaukee and St. Paul Railway Company et al., defendants," consolidated cause in equity No. 4931.

2. The applicant is also advised that from and after August 1, 1928, and up to the close of business August 31, 1928, there has been paid out of payments made by such stockholders under the reorganization plan the further sum of $493.10 (in addition to the sums referred to in paragraph 4 of the report of April 11, 1928, paragraph 2 of the report of May 12, 1928, paragraph 1 of the report of June 14, 1928, paragraph 1 of the report of July 14, 1928, and
204 paragraph 1 of the report of August 14, 1928) in payment of various items of reorganization expenses of like character to those specified in said paragraph 4 of said report of April 11, 1928, on account of the estimated amount of such expenses previously reported, to wit:

Item	Amount
Insurance and postage	$212.08
Printing	281.02
Total	493.10

3. The applicant is further advised that from and after August 1, 1928, and up to the close of business August 31, 1928, there has been paid or received by the applicant for payment, out of payments made by such stockholders under the reorganization plan, the further sum of $1,117.45 (in addition to the sums referred to in paragraph 5 of said report of April 11, 1928, paragraph 3 of said report of May 12, 1928, paragraph 2 of said report of June 14, 1928, paragraph 2 of said report of July 14, 1928 and paragraph 2 of said report of August 14, 1928) for stamp, recording, and other governmental taxes and charges of the character referred to in the above-mentioned order.

CHICAGO, MILWAUKEE, ST. PAUL
AND PACIFIC RAILROAD COMPANY,
By R. J. MARONY, *Vice President.*

SEPTEMBER 12, 1928.

205 STATE OF NEW YORK,
County of New York, ss:

R. J. MARONY, being duly sworn, deposes and says that he is a vice president of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, the applicant named in the foregoing report; that he

has read said report; and that the facts therein stated are true to the best of his knowledge and belief.

R. J. MARONY.

Subscribed and sworn to before me this 12th day of September, 1928.

[NOTARIAL SEAL] L. G. WEIFFENBACH,
Notary Public, Bronx County.

Clerk's No. 25, register's No. 3064. Certificate filed in New York Co. Clerk's No. 320, register's No. O–228. Commission expires March 30, 1930.

206 *Exhibit M to petition*

Before the Interstate Commerce Commission. Finance Docket No. 6240

SECOND SUPPLEMENTAL APPLICATION

Chicago, Milwaukee, St. Paul and Pacific Railroad Company (hereinafter called the applicant) respectfully shows to the commission as follows:

The applicant has received bills for certain charges referred to in its supplemental application herein dated January 26, 1928, which it is obligated to pay, to wit, the charges of the corporate trustees under the mortgages securing the bonds which the applicant was authorized to issue by the commission's order herein dated January 4, 1928, and the charges of the transfer agent and registrar for the voting trust certificates issued pursuant to the reorganization plan for services in connection with the certification and delivery of the original issue of such bonds and voting trust certificates as follows:

Guaranty Trust Company of New York, as corporate trustee under the mortgage and deed of trust dated as of February 2, 1925, securing the fifty-year five per cent mortgage gold bonds of the applicant, for authenticating the original issue of fifty-year five per cent mortgage gold bonds of the applicant	$62,190.00
The National City Bank of New York, as trustee under the adjustment mortgage dated as of February 2, 1925, for authenticating the original issue of five per cent convertible adjustment mortgage gold bonds of the applicant	97,712.00
207 The New York Trust Company, as transfer agent for the voting trustees under the agreement dated December 31, 1927, between the owners of preferred stock and common stock of Chicago, Milwaukee, St. Paul and Pacific Railroad Company and Elihu Root, Frederick H. Ecker, Henry S. Pritchett, Samuel Rea, and W. D. Van Dyke, voting trustees, for signing and issuing the original issue of voting trust certificates in respect of preferred stock and common stock of the applicant	15,386.75
Central Union Trust Company of New York, as registrar for said voting trustees, for registering the original issue of voting trust certificates for preferred stock and common stock of the applicant	5,149.05

The applicant is advised that the above charges are in accordance with the standard scale of rates for like services in effect among

trust companies and banks in New York City performing corporate trust and corporate agency functions.

Wherefore, the applicant requests the commission to authorize the applicant to pay out of any moneys received from the payments made by stockholders of Chicago, Milwaukee and St. Paul Railway Company the amounts of the charges hereinabove set forth.

Dated May 22, 1928.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,
By R. J. MARONY, *Vice-President.*

208 STATE OF NEW YORK,
County of New York, ss:

R. J. Marony, being duly sworn, deposes and says that he is a vice-president of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, the applicant named in the foregoing supplemental application, that he has read the foregoing supplemental application; and that the facts therein stated are true to the best of his knowledge and belief.

R. J. MARONY.

Sworn to and subscribed before me this 22nd day of May, 1928.

[NOTARIAL SEAL.] GEORGE F. SHEA,
Notary Public, New York County.

N. Y. Co. clerk's No. 732, reg. No. O–720. Bronx Co. clerk's No. 70, reg. No. 3622B. Kings Co. clerk's No. 343, reg. No. 532. Certificates also filed in Richmond and Dutchess Counties. Commission expires March 30, 1930.

209

210

211 In United States District Court

[Title omitted.]

Motion to dismiss and answer of Interstate Commerce Commission

Filed Nov. 13, 1928

MOTION TO DISMISS

Comes now the Interstate Commerce Commission, hereinafter called the commission, and moves that the petition be dismissed upon the grounds that—

On its face the petition, including the exhibits made a part thereof, shows that the suit is brought under the urgent deficiencies act, approved October 22, 1913 (38 Stat. 219), to set aside, suspend, and annul, and to enjoin enforcement of certain provisions con-

tained in certificates and orders of the commission therein referred to, which said certificates and orders granted authority to the petitioner to issue securities: that the provisions so sought to be set aside, annulled, and enjoined constitute material parts of the conditions and terms upon which, and of the considerations for which, the petitioner was authorized to issue its said securities and are not therefore segregable from the affirmative part of the order granting petitioner authority to issue its securities, which
212 authority has in large part been exercised and is not sought to be set aside. Said urgent deficiencies act confers jurisdiction upon this court "to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission," but the jurisdiction thereby conferred to set aside in part as well as in whole orders of the commission is not applicable to set aside and enjoin enforcement of part of an order only, where such part is inseparably related to the balance of the order, which the court is not asked to set aside.

ANSWER

The commission, without waving its objections to the jurisdiction of the court and to the sufficiency of the petition, stated in its motion to dismiss, and now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the petition contained, answers and says:

I

Answering the opening subdivision and subdivisions (1) to (3), inclusive, of the petition, the commission admits that the allegations therein contained are true, except that it denies the allegations contained in paragraphs (1) and (2) in so far as they purport to assert or show that the court has jurisdiction under the urgent deficiencies act, approved October 22, 1913 (38 Stat. 219), to grant the relief prayed for in the petition.

II

Answering subdivisions (4) to (6), inclusive, of the petition, the commission admits that the allegations therein contained are true.

213 III

Answering subdivision (7) of the petition, the commission admits that a plan and agreement dated June 1, 1925, for the reorganization of the railway company, copy of which is made a part of said petition, was adopted by the reorganization managers and committees representing certain preferred stockholders, certain common stockholders, and certain bondholders, to which said copy the

commission respectfully refers the court for full and complete information in respect of the parties to said plan and agreement, the rights and powers purporting to be created thereby, the purposes thereof, and steps to be taken thereunder.

IV

Answering subdivisions (8) and (9) of the petition, the commission admits that the allegations therein contained are true.

V

Answering the first and second paragraphs of subdivision (10) of the petition, the commission admits and alleges that the reorganization plan provided that holders of preferred stock and holders of common stock of the railway company, depositing shares of stock thereunder, should respectively pay to the reorganization managers $28 and $32 per share of stock so deposited; that out of said payments a sum equal to $1.50 per share of stock so deposited should be set aside to provide for the compensation of the reorganization managers, and the committees, fixed as in the reorganization plan provided, and the fees and disbursements of their counsel and of the depositaries and sub-depositaries, any balance of said sum to
214 be paid over the new company, to be organized as provided in the reorganization plan, as additional working capital, or, if the reorganization managers in their discretion should so determine, to be returned pro rata to the holders of certificates of deposit for stock.

The commission further admits and alleges that the reorganization plan provided that depositing stockholders so paying to the reorganization managers $28 per share and those paying to the reorganization managers $32 per share should respectively receive bonds in the new company in the principal amount of $24 for each share of preferred stock and $28 for each share of common stock deposited, but, in connection with this latter provision, the commission alleges that under the reorganization plan said depositing stockholders, making payments as aforesaid, were likewise to receive in securities of the new company one share of preferred stock for each share of preferred stock of the railway company so deposited and one share of common stock for each shares of common stock of the railway company so deposited. The commission denies that the provisions of the reorganization plan in respect of the securities of the new company to be delivered to said depositing stockholders in exchange for the consideration to be received from them were for the purpose, or that they had the effect of not capitalizing in securities to be issued by the new company the expenses of reorganization.

Answering the third paragraph of said subdivision (10) of the petition, the commission denies each of and all the allegations therein contained.

Further answering the allegations of said subdivision (10), as contained in all of its paragraphs and including both those allegations expressly and not expressly hereinabove answered, the commission respectfully refers the court to the provisions of the reorganization plan, copy of which is made a part of the petition as aforesaid, for full and complete information in the premises.

215

VI

Answering subdivision (11) of the petition, the commission admits that the further allegations therein contained relating to provisions of the reorganization plan are substantially correct, but for full and complete information in respect thereof the commisison refers the court to said copy of the reorganization plan.

VII

Answering subdivision (12) of the petition, the commission admits that the allegations therein contained are true, except that it denies that the modifications of the reorganization plan therein mentioned are not material to the issues involved in this case.

VIII

Answering subdivision (13) of the petition, the commission admits that the allegations therein contained are true, except that it denies the truth of the allegation "that the purchasers were not required to take any part of the properties sold until after the issue of said securities."

IX

Answering subdivision (14) of the petition, the commisison admits that the petitioner was organized March 31, 1927, under the laws of the State of Wisconsin to acquire control of and operate lines of railroad within and without said State, and that the petitioner entered into an agreement dated April 11, 1927, with the parties noted in said subdivision, a copy of which said agreement is made a

216 part of the petition marked "Exhibit B." Further answering said subdivision, the commission admits that the allegations therein contained relating to the provisions of said agreement are substantially correct, but for full and complete information in respect thereof the commisison refers the court to said copy of the agreement.

X

Answering subdivisions (15) and (16) of the petition, the commission admits the truth of the allegations therein contained.

XI

Answering subdivision (17) of the petition, the commission admits that on January 12, 1928, the petitioner issued to the reorganization

managers $106,395,096, principal amount, of petitioner's fifty-year five per cent mortgage gold bonds, $182,873,693 of the petitioner's five per cent convertible adjustment mortgage gold bonds, $118,845,800, par amount, of the petitioner's preferred stock, and 1,174,045 shares of petitioner's common stock, without par value, in consideration of the transfer to the petitioner of the property of the railway company and the obligation of the reorganization managers to pay to the petitioner, or to apply to the expenses of the reorganization plan other than those to be paid out of the trust fund the cash to be received by the reorganization managers other than the trust fund, but the commission denies that the securities so issued were issued in accordance with the commission's certificate and order of January 4, 1928. The commission alleges that, on the contrary, said securities were issued without its authority and in contravention of its said certificate and order in that the consideration, in exchange for which petitioner was authorized to issue said securities by said
217 certificate and order, of which the commission's report (shown in Exhibit D to the petition) was made a part, included the consideration that the whole $4 per share fund (which includes said trust fund and is particularly described in said report) received from payments made by depositing stockholders of the railway company should be impounded by petitioner instead of being set aside by the reorganization managers, and that, as so impounded, it should be subject to the condition and understanding that no expenditures therefrom should be made unless and until authorized by due order of court in respect of payments subject to the court's jurisdiction or by this commission. Further answering said subdivision (17), the commission admits that the reorganization managers subsequently from time to time distributed said securities to the depositing bondholders and stockholders, and from time to time received from the depositing stockholders the payments required by the reorganization plan to be made by them, and that thereafter the reorganization managers paid to the petitioner or applied or held for its account all cash paid to them by depositing stockholders other than the trust fund. In respect of those allegations not expressly hereinabove answered the commission disclaims information sufficient to form a belief as to whether or not they are true and demands proof thereof if they are deemed to be material to the issues herein involved.

XII

Answering subdivision (18) of the petition, the commission disclaims information sufficient to form a belief as to the truth of the allegations therein contained, except that it admits that petitioner, in supplemental applications filed with the commission hereinafter mentioned, represented that it had incurred, or that it would incur, obligations in respect of the matters mentioned in said subdivision.

218

XIII

Answering subdivision (19) of the petition, the commission admits that petitioner filed the supplemental application therein mentioned, copy of which is made a part of the petition marked "Exhibit E." The commission further admits that said application requested authority substantially as stated in said subdivision, but for full and complete information in the premises the commission respectfully refers the court to said copy of the application.

XIV

Answering subdivision (20) of the petition, the commission admits that it made and entered the supplemental order therein mentioned, copy of which is made a part of the petition marked "Exhibit F," and that petitioner filed the reports showing expenditures aggregating $61,758,375.81, copies of which are made parts of the petition marked "Exhibits G, H, I, J, K, and L." Except as so expressly admitted, the commission denies each of and all the allegations contained in said subdivision and in particular denies that the allegations in respect of the contents of said supplemental order constitutes a correct statement thereof, because said allegations make no mention of the fact that the payments thereby authorized to be made were to be made out of the $4 per share fund which had been defined in, and which petitioner had been ordered to impound by, the commission's certificate and order of January 4, 1928, and in that no mention is made of the fact that the reports required of the petitioner were of the payments so authorized to be made. The commission further particularly denies that all of the expenditures reported in said reports filed by petitioner were reported pursuant to said supplemental order, and alleges that, on the contrary, by

219 far the greater part of the expenditures so reported were not made out of said $4 per share fund.

219

XV

Answering subdivision (21) of the petition, the commission admits that petitioner filed its second supplemental application, a copy whereof is made a part of the petition marked "Exhibit M," representing that it had received the bills mentioned in the first sentence of said division, but disclaims information sufficient to form a belief as to whether the charges made in said bills are fair and reasonable for the services rendered and therefore due and owing, and demands proof thereof if deemed material to the issues of this controversy. Further answering said subdivision, the commission admits that said second supplemental application asked for authority to pay said bills out of moneys received from payments made by stockholders of the railway company and that the commission has entered no order upon said second supplemental application. The commission denies that it

has authorized any person or persons to represent or speak for it in respect of the disposition it may make of said second supplemental application, or in respect of any other future action of the commission giving to petitioner or withholding from petitioner authority to make expenditures.

XVI

Answering subdivision (22) of the petition, the commission admits that the petitioner has not received the trust fund; it disclaims information sufficient to form a belief as to whether or not the services and disbursements therein referred to were rendered and
220 made in reliance upon the trust fund to be created for their payment and demands proof thereof if deemed revelant to the issues of this controversy. Except as so answered the commission avers that the allegations contained in said subdivision are either irrelevant and immaterial or constitute conclusions of law, and that each of said conclusions of law is incorrect.

XVII

Answering the first paragraph of subdivision (23) of the petition, the commission denies that it has made any interpretation of its said certificate and order and alleges that the force and effect of the authority therein conferred and requirements therein made are best shown in its said certificate and order, to which the court is respectfully referred for full information in the premises.

Answering the first two sentences of the second paragraph of said subdivision (23), the commission avers that all of the allegations therein contained are conclusions of law. Answering the remaining allegations of the second paragraph of said subdivision (23) the commission denies the truth thereof. The commission admits, however, that where, as in the instant case, securities have been issued by a carrier without authority of the commission, or contrary to the terms and conditions of the authority given, it is the duty of the commission to enforce the provisions of the act and the terms of its order by requesting appropriate court action.

XVIII

Answering subdivision (24) of the petition, the commission denies that petitioner will suffer irreparable injury and damage unless the relief prayed for in the petition is granted.

221 For a further and affirmative defense the commission alleges that its certificate and order (shown as Exhibit D to the petition) granted petitioner authority to issue securities upon certain specified terms and conditions, which said terms and conditions prescribed, among other things, the considerations and obligations in exchange for which petitioner was authorized to issue its said securities; that said considerations and obligations so prescribed included not only the transfer of railway properties and other considerations

contracted for by and between the parties to the reorganization plan and the agreement of April 11, 1927 (shown respectively as Exhibits A and B to the petition), but also included the further consideration and obligations that the $4 per share fund (particularly described at pages 681, 698, and 699 of the commission's report and which includes the trust fund) received from the payments to be made by depositing stockholders of the railway company should be impounded by petitioner instead of being set aside by the reorganization managers, and that, as so impounded, it should be subject to the condition and understanding that expenditures therefrom should not be made unless and until authorized by due order of court in respect to payments subject to the court's jurisdiction or by this commission; that the prescription of said additional consideration and obligations for which petitioner could issue its said securities was within the authority of the commission and constituted a valid condition which was not, and is not, separable from the permission granted petitioner to issue said securities; that despite the fact that the permission so granted and the conditions in respect of its exercise are inseparably related parts of the commission's said certificate and order, petitioner has issued in large part its said securities in exchange for considerations and obligations which include only those contracted for in said reorganization plan and said agreement of April 11, 1927, and
222 do not include the additional consideration and obligations so prescribed by the commission, and is here asking the court to set aside, suspend, and annul that part of the commission's certificate and order which prescribed those additional considerations and obligations. The commission alleges that the granting of the relief so prayed for would have the effect of substituting the judgment of the court for that of the commission in respect of administrative matters exclusively entrusted by the act to the commisison.

All of which matters and things the commission is ready to aver, maintain, and prove as this honorable court shall direct, and hereby prays that said petition be dismissed.

INTERNATIONAL COMMERCE COMMISSION,
By DANIEL W. KNOWLTON, *Chief Counsel.*

[*Duly sworn to by Balthasar H. Meyer; jurat omitted in printing.*]

225 In United States District Court

[Title omitted.]

Motion to Dismiss and Answer of the United States

Filed November 16, 1928

MOTION TO DISMISS

Comes now the United States, hereinafter called the defendant and moves that the petition be dismissed upon the grounds that—

The petition, including the exhibits made a part thereof, shows that the suit is brought under the urgent deficiencies act, approved

October 22, 1913 (38 Stat. 219), to set aside, suspend and annul, and to enjoin enforcement of, certain provisions contained in certificates and orders of the commission, therein referred to, which said certificates and orders granted authority to the petitioner to issue securities; that the provisions so sought to be set aside, annulled,
226 and enjoined constitute material parts of the conditions and terms upon which, and of the considerations for which, the petitioner was authorized to issue its said securities and are not therefore segregable from the affirmative part of the order granting petitioner authority to issue its securities, which authority has in large part been exercised and is not sought to be set aside. Said urgent deficiencies act confers jurisdiction upon this court "to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission," but the jurisdiction thereby conferred to set aside in part as well as in whole orders of the commission is not applicable to set aside and enjoin enforcement of part of an order only where such part is inseparably related to the balance of the order which the court is not asked to set aside.

ANSWER

The United States, without waiving its objections to the jurisdiction of the court and to the sufficiency of the petition, stated in its motion to dismiss, and now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the petition contained, answers and says:

I

Answering the opening subdivision and subdivisions (1) to (3), inclusive, of the petition, the defendant admits that the allegations therein contained are true, except that it denies the allegations contained in paragraphs (1) and (2) in so far as they purport to assert or show that the court has jurisdiction under the urgent deficiencies act, approved October 22, 1913 (38 Stat. 219), to grant the relief prayed for in the petition.

II

227 Answering subdivisions (4) to (6), inclusive, of the petition the defendant admits that the allegations therein contained are true.

III

Answering subdivision (7) of the petition, defendant admits that a plan and agreement dated June 1, 1925, for the reorganization of the railway company, copy of which is made a part of said petition, was

adopted by the reorganization managers and committees representing certain preferred stockholders, certain common stockholders, and certain bondholders, to which said copy the defendant respectfully refers the court for full and complete information in respect of the parties to said plan and agreement, the rights and powers purporting to be created thereby, the purposes thereof, and steps to be taken thereunder.

IV

Answering subdivisions (8) and (9) of the petition, the defendant admits that the allegations therein contained are true.

V

Answering the first and second paragraphs of subdivision (10) of the petition, the defendant admits and alleges that the reorganization plan provided that holders of preferred stock and holders of common stock of the railway company, depositing shares of stock thereunder, should respectively pay to the reorganization managers $28 and $32 per share of stock so deposited; that out of said payments a sum equal to $1.50 per share of stock so deposited
228 should be set aside to provide for the compensation of the reorganization managers and the committees, fixed as in the reorganization plan provided, and the fees and disbursements of their counsel and of the depositaries and subdepositaries, any balance of said sum to be paid over to the new company, to be organized as provided in the reorganization plan, as additional working capital, or, if the reorganization managers in their discretion should so determine, to be returned pro rata to the holders of certificates of deposit for stock.

The defendant further admits and alleges that the reorganization plan provided that depositing stockholders so paying to the reorganization managers $28 per share and those paying to the reorganization managers $32 per share should respectively receive bonds in the new company in the principal amount of $24 for each share of preferred stock and $28 for each share of common stock deposited, but, in connection with this latter provision, the defendant alleges that under the reorganization plan said depositing stockholders, making payments as aforesaid, were likewise to receive in securities of the new company one share of preferred stock for each share of preferred stock of the railway company so deposited and one share of common stock for each share of common stock of the railway company so deposited. The defendant denies that the provisions of the reorganization plan in respect of the securities of the new company to be delivered to said depositing stockholders in exchange for the consideration to be received from them were for the purpose, or that they had the effect, of not capitalizing in securities to be issued by the new company the expenses of reorganization.

Answering the third paragraph of said subdivision (10) of the petition, the defendant denies each of and all the allegations therein contained.

Further answering the allegations of said subdivision (10), as contained in all of the paragraphs, and including both those
229 allegations expressly and not expressly hereinabove answered, the defendant respectfully refers the court to the provisions of the reorganization plan, copy of which is made a part of the petition as aforesaid, for full and complete information in the premises.

VI

Answering subdivision (11) of the petition, the defendant admits that the further allegations therein contained relating to provisions of the reorganization plan are substantially correct, but for full and complete information in respect thereof the defendant refers the court to said copy of the reorganization plan.

VII

Answering subdivision (12) of the petition, the defendant admits that the allegations therein contained are true, except that it denies that the modifications of the reorganization plan therein mentioned are not material to the issues involved in this case.

VIII

Answering subdivision (13) of the petition, the defendant admits that the allegations therein contained are true, except that it denies the truth of the allegation "that the purchasers were not required to take any part of the properties sold until after the issue of said securities."

IX

Answering subdivision (14) of the petition, the defendant admits that the petitioner was organized March 31, 1927, under the
230 laws of the State of Wisconsin to acquire control of and operate lines of railroad within and without said State, and that the petitioner entered into an agreement dated April 11, 1927, with the parties noted in said subdivision, a copy of which said agreement is made a part of the petition marked "Exhibit B." Further answering said subdivision, the defendant admits that the allegations therein contained relating to the provisions of said agreement are substantially correct, but for full and complete information in respect thereof the defendant refers the court to said copy of the agreement.

X

Answering subdivisions (15) and (16) of the petition, the defendant admits the truth of the allegations therein contained.

XI

Answering subdivision (17) of the petition, the defendant admits that on January 12, 1928, the petitioner issued to the reorganization managers $106,395,096, principal amount, of petitioner's fifty-year five per cent mortgage gold bonds, $182,873,695 of the petitioner's five per cent convertible adjustment mortgage gold bonds, $118,845,800, par amount, of the petitioner's preferred stock and 1,174,045 shares of petitioner's common stock, without par value in consideration of the transfer to the petitioner of the property of the railway company and the obligation of the reorganization managers to pay to the petitioner, or to apply to the expenses of the reorganization plan other than those to be paid out of the trust fund the cash to be received by the reorganization managers other than the trust fund, but the defendant denies that the securities so issued were issued in accordance with the commission's certificate and order of January 4, 1928. The defendant alleges that on the contrary
231 said securities were issued without the authority of the Interstate Commerce Commission and in contravention of its said certificate and order in that the consideration in exchange for which petitioner was authorized to issue said securities by said certificate and order, of which the commission's report (shown in Exhibit D to the petition) was made a part, included the consideration that the whole $4 per share fund (which includes said trust fund and is particularly described in said report) received from payments made by depositing stockholders of the railway company should be impounded by petitioner instead of being set aside by the reorganization managers, and that, as so impounded, it should be subject to the condition and understanding that no expenditures therefrom should be made unless and until authorized by due order of court in respect of payments subject to the court's jurisdiction or by the Interstate Commerce Commission. Further answering said subdivision (17), the defendant admits that the reorganization managers subsequently from time to time distributed said securities to the depositing bondholders and stockholders, and from time to time received from the depositing stockholders the payments required by the reorganization plan to be made by them, and that thereafter the reorganization managers paid to the petitioner or applied or held for its account all cash paid to them by depositing stockholders other than the trust fund. In respect of those allegations not expressly hereinabove answered the defendant disclaims information sufficient to form a belief as to whether or not they are true and demands proof thereof if they are deemed to be material to the issues herein involved.

XII

Answering subdivision (18) of the petition, the defendant disclaims information sufficient to form a belief as to the truth of
232 the allegations therein contained, except that it admits that petitioner, in supplemental applications filed with the commission hereinafter mentioned, represented that it had incurred, or that it would incur, obligations in respect of the matters mentioned in said subdivision.

XIII

Answering subdivision (19) of the petition, the defendant admits that petitioner filed the supplemental application therein mentioned, copy of which is made a part of the petition marked "Exhibit E." The defendant further admits that said application requested authority substantially as stated in said subdivision, but for full and complete information in the premises the defendant respectfully refers the court to said copy of the application.

XIV

Answering subdivision (20) of the petition, the defendant admits that the commission made and entered the supplemental order therein mentioned, copy of which is made a part of the petition marked "Exhibit F," and that petitioner filed the reports showing expenditures aggregating $61,758,375.81, copies of which are made parts of the petition marked "Exhibits G, H, I, J, K, and L." Except as so expressly admitted the defendant denies each of and all the allegations contained in said subdivision and in particular denies that the allegations in respect of the contents of said supplemental order constitute a correct statement thereof, because said allegations make no mention of the fact that the payments thereby authorized to be made were to be made out of the $4 per share fund which had been defined in, and which petitioner had been ordered to impound by, the commission's certificate and order of January 4, 1928, and in that no mention is made of the fact that the reports required
233 of the petitioner were of the payments so authorized to be made. The defendant further particularly denies that all of the expenditures reported in said reports filed by petitioner were reported pursuant to said supplemental order, and alleges that on the contrary by far the greater part of the expenditures so reported were not made out of said $4 per share fund.

XV

Answering subdivision (21) of the petition, the defendant admits that petitioner filed its second supplemental application, a copy whereof is made a part of the petition marked "Exhibit M," representing that it had received the bills mentioned in the first sentence of said subdivision, but disclaims information sufficient to form a belief as to whether the charges made in said bills are fair and

reasonable for the services rendered and therefore due and owing, and demands proof thereof if deemed material to the issues of this controversy. Futher answering said subdivision the defendant admits that said second supplemental application asked for authority to pay said bills out of moneys received from payments made by stockholders of the railway company and that the commission has entered no order upon said second supplemental application. The defendant denies that the commission has authorized any person or persons to represent or speak for it in respect of the disposition it may make of said second supplemental application, or in respect of any other future action of the commission giving to petitioner or withholding from petitioner authority to make expenditures.

XVI

Answering subdivision (22) of the petition, the defendant admits that the petitioner has not received the trust fund; it dis-
234 claims information sufficient to form a belief as to whether or not the services and disbursements therein referred to were rendered and made in reliance upon the trust fund to be created for their payment and demands proof thereof if deemed relevant to the issues of this controversy. Except as so answered, the defendant avers that the allegations contained in said subdivision are either irrelevant and immaterial or constitute conclusions of law, and that each of said conclusions of law is incorrect.

XVII

Answering the first paragraph of subdivision (23) of the petition, the defendant denies that the commission has made any interpretation of its said certificate and order and alleges that the force and effect of the authority therein conferred and requirements therein made are best shown in its said certificate and order, to which the court is respectfully referred for full information in the premises.

Answering the first two sentences of the second paragraph of said subdivision (23), the defendant avers that all of the allegations therein contained are conclusions of law. Answering the remaining allegations of the second paragraph of said subdivision (23), the defendant denies the truth thereof. The defendant admits, however, that where, as in the instant case, securities have been issued by a carrier without authority of the commission or contrary to the terms and conditions of the authority given it is the duty of the commission to enforce the provisions of the act and the terms of its order by requesting appropriate court action.

XVIII

Answering subdivision (24) of the petition, the defendant denies that petitioner will suffer irreparable injury and damage unless the relief prayed for in the petition is granted.

235 For a further and affirmative defense the defendant alleges that the certificate and order of the Commission (shown as Exhibit D to the petition) granted petitioner authority to issue securities upon certain specified terms and conditions, which said terms and conditions prescribed, among other things, the considerations and obligations in exchange for which petitioner was authoized to issue its said securities; that said considerations and obligations so prescribed included not only the transfer of railway properties and other considerations contracted for by and *and* between the parties to the reorganization plan and the agreement of April 11, 1927 (shown respectively as Exhibits A and B to the petition), but also included the further consideration and obligations that the $4 per share fund (particularly described at pages 681, 698, and 699 of the commissions' report and which includes the trust fund) received from the payments to be made by depositing stockholders of the railway company should be impounded by petitioner instead of being set aside by the reorganization managers, and, that, as so impounded, it should be subject to the condition and understanding that expenditures therefrom should not be made unless and until authorized by due order of court in respect to the payments subject to the court's jurisdiction or by the commission: that the prescription of said additional consideration and obligations for which petitioner could issue its said securities was within the authority of the commission and constituted a valid condition which was not, and is not, separable from the permission granted petitioner to issue said securities; that despite the fact that the permission so granted and the conditions in respect of its exercise are inseparably related parts of the commission's said certificate and order, petitioner has issued in large part its said securities in exchange for considerations and obligations which include only those contracted for in said reorganization plan and said agreement of April 11, 1927, and do not include
236 the additional consideration and obligations so prescribed by the commission, and is here asking the court to set aside, suspend, and annul that part of the commission's certificate and order which prescribed those additional considerations and obligations. The defendant alleges that the granting of the relief so prayed for would have the effect of substituting the judgment of the court for that of the commission in respect of administrative matters exclusively entrusted by the act to the commission.

All of which matters and things the defendant is ready to aver, maintain, and prove as this honorable court shall direct, and hereby prays that said petition be dismissed.

GEORGE E. Q. JOHNSON,
United States Attorney.

WILLIAM J. DONOVAN,
The Assistant to the Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
[*Duly sworn to by Elmer B. Collins; jurat omitted in printing.*]

238 In United States District Court

[Title omitted.]

Opinion June 24, 1929

Judges Alschuler, circuit judge, and Wilkerson and Lindley, district judges

Lindley, district judge:

Plaintiff seeks to enjoin the enforcement of clause b of a certain proviso in an order of the commission entered January 4th, 1928, wherein that body certified that public convenience and necessity required the acquisition and operation by plaintiff of the lines of railroad formerly owned by the Chicago, Milwaukee & St. Paul Railway Company (old company), and ordered that plaintiff (new company) be authorized to issue the securities therein mentioned for the purpose of acquiring said railroad: "Provided, however," the commission directed, "and the authority herein is granted upon the express conditions, that the applicant (a) shall not pay any underwriting fees in connection with the proposed issue of securities; and (b) shall impound in a separate fund the money received from
239 the payment by holders of preferred and common stock in an amount equal to $4.00 a share, which shall not be paid out unless and until so authorized by order of the court in respect to payments subject to the court's jurisdiction or by this commission."

The properties of the old company came into the custody of this court by virtue of a receivership in equity on March 18th, 1925, in a creditors' suit, with which were consolidated subsequent suits to foreclose outstanding mortgages. The consolidated cause duly proceeded to a decree of foreclosure, order of sale, and sale.

Pending foreclosure various committees were formed to represent the different classes of security holders of the mortgagor for the purpose of working out a plan of reorganization of the property. Two banking houses as reorganization managers, cooperating with the committees, submitted a plan of reorganization, which after extended controversy and litigation, in a somewhat modified form, was approved by the court and assented to by the interested parties. The properties were sold on Dec. 22nd, 1926, for $140,000,000.00, and the sale subject to certain liens which were not disturbed and are not of material importance in an adjudication of the instant question, was approved by the court on Dec. 22nd, 1926. The purchasers bought the property for the benefit of the security holders in pursuance of the plan of reorganization, by which it was provided that the property should eventually be conveyed to plaintiff and that the latter would thereupon issue its securities to the reorganization managers in consideration of the conveyance of such properties and the delivery of certain cash advanced by the stockholders of the old company. Said securities were then to be distributed by the reorganization managers to the bondholders and stockholders of the old company in accordance with the plan and to the extent not so used were to be put
240 in the treasury of plaintiff. On April 11th, 1927, plaintiff contracted with the purchasers and the reorganization managers

for the acquisition of the properties in accordance with the plan. The order of this court confirming the sale provided that the purchaser should not be required to take and pay for the property sold until the new company had been authorized by the proper authorities to acquire the properties and issue securities, as provided for in the reorganization plan and that the deeds for the property should not be delivered until after the commission had authorized plaintiff to issue the securities.

On April 11th, 1927, plaintiff filed its application with the commission seeking authority to acquire and operate the lines of railroad, to acquire control of the carriers then controlled by the old company, to issue securities in accordance with said reorganization plan, and assume certain obligations existing against the old company. After due hearing the commission entered the order above mentioned, containing the proviso now complained of.

Pursuant to the reorganization plan, to which the old shareholders depositing their stock agreed, these stockholders paid, through their respective committees, to the reorganization managers $28.00 for each share of preferred stock and $32.00 for each share of the common stock of the old company held by them. It was expressly provided that against these payments but $24.00 and $28.00, respectively, in bonds of the new company should be issued. The remaining $4.00 in the payments so to be made were not to be capitalized by the issuance of any new securities. The plan provided as to this fund of $4.00 per share that: "From this amount a sum equal to $1.50 per share of the existing preferred stock and common stock of the railway company will be set aside to provide for the compensation of the reorganization managers and the committees fixed
241 as hereinafter on page 22 provided, and the fees and disbursements of their counsel and all depositaries and subdepositaries, any balance of said sum to be paid over to the new company as additional working capital, or, if the reorganization managers in their discretion shall so determine, to be returned prorata to the holders of certificates of deposit for stock." This fund is hereinafter termed "trust fund" to distinguish it from the remaining $2.50 per share constituting the entire $4.00 fund. The plan and reorganization agreement provided that the managers would pay over to the plaintiff all cash received by them under the reorganization plan other than the trust fund hereinbefore mentioned, which was to be retained and handled by the reorganization managers in their uncontrolled discretion in satisfying the compensation of committees' counsel, depositaries and the managers. The provision in the plan regarding the entire $4.00 fund is as follows: "Payment of all the expenses of the reorganization shall be made out of that part of the payments by stockholders for which new securities are not to be issued, thus accomplishing all the foregoing advantages without expense to the creditors and without burdening the system with additional capitalization for such expenses." The following pro-

vision is also contained in the plan: "The cash requirements of $70,032,548 are to be met, as hereinafter provided, by payments of $28.00 per share by the holders of the $115,931,900 existing preferred stock of the railway company and of $32.00 per share by the holders of the $117,411,300 existing common stock of the railway company, for which only $60,698,820 of new bonds will be issued." It is clear that the purpose of these provisions was to require all expenses payable from the trust fund to be borne by the participating stockholders of the old company without expense to the creditors thereof and without burdening the new company with any capitalization for such expenses. The commission in its
242 report found that for the $4.00 per share no new securities were to be issued, and that the agreement provided as to $1.50 per share that, after the payment of expenses, "any balance of said sum shall be paid over to the new company, to be organized as provided in the reorganization plan, as additional working capital, or, if the reorganization managers in their discretion should so determine, to be returned prorata to the holders of certificates of deposit for stock." By their contract the reorganization managers, as custodians of the trust fund, contracted to satisfy all other persons for the contract price or reasonable value of the services rendered by them in perfecting the reorganization and other expenses, whether the plan should be consummated or abandoned. None of these expenses were conditional upon the success of the reorganization plan other than the compensation of the reorganization managers themselves. All of the $2.50 per share not exhausted by the foreclosure costs and plaintiff's expenses was to be delivered to plaintiff.

The first question which presents itself to us is whether the language of the proviso warrants the construction placed thereon by the commission; whether the true intent thereof was not merely to require the impounding of only that part of the $4.00 per share over and above the trust fund of $1.50 per share. The reorganization plan and agreement provided that "$1.50 per share may be used by the reorganization managers in their absolute and uncontrolled discretion, * * * to pay the fees and disbursements of the counsel of reorganization managers and the committee, and the fees and disbursements of all depositaries and subdepositaries, and if the plan shall not be abandoned to pay the compensation of the reorganization managers and committees." This compensation was one per cent of the principal amount of the outstanding bonds and
243 twenty cents per share upon the shares of outstanding stock.

The plan was approved by the District Court Jan. 19th, 1927. The decree then entered provided that the deeds to plaintiff should not be delivered until the latter should have been fully authorized by the commission to issue the securities provided in the reorganization plan or any modification thereof which might thereafter be

submitted to the court. The court retained jurisdiction to pass upon modifications of the plan.

After the entry of the order now complained of, plaintiff applied to the District Court for an order directing the execution and delivery of the deeds, alleging that the commission had authorized the plaintiff to issue the new securities and submitting with the petition a certified copy of the order of the commission. Upon consideration thereof the court directed the execution and delivery of the deeds. It is evident that neither the court nor counsel then believed the order to have the meaning which the Interstate Commerce Commission now claims for it. The trust fund was not in the plaintiff's possession, nor did the latter have any right to its possession. In order to give plaintiff such right, a modification of the plan would have been required, for the managers could not agree with plaintiff to turn over the fund which had been created by the contract between the stockholders and the managers and was then held under a plan which had been approved by the court after according to all stockholders an opportunity to be heard.

The petition was a representation to the court that plaintiff had accepted the order and expected to comply with the condition, but it could not comply with the order as it is now interpreted by the commission without modifying the plan and causing the modification to be submitted to the court under the jurisdiction which had been reserved. Until such modification should be made no one had any right to demand that the reorganization managers should
244 turn over the fund. They were not parties to the proceedings before the commission, and the order is not directed against them. If the District Court had been of the opinion that the intent of the order was that the plaintiff should obtain possession of the trust fund, that court undoubtedly would have required as a condition precedent either a modification of the plan, so that plaintiff could comply with the order, or the setting aside of the order by a statutory court which had jurisdiction so to do.

It is a general principle that courts will, if reasonably possible so to do, construe a statute so as to give it effect, and that when an act or an administrative order is equally susceptible of two constructions, one of which will maintain and the other destroy it, the courts will always adopt the former. (25 R. C. L. 999; Unity v. Burrage, 103 U. S. 447; Dazey v. Mechanics, etc., Ins. Co., 95 Tenn. 245.) It is only a fair and reasonable interpretation of this order, when read in its relation to the reorganization plan and to the litigation in the District Court as to which of the facts were before the commission, to construe it as not imposing upon plaintiff a requirement that it should impound money to the possession of which it had no right, and which was covered by a contract the parties to which were not before the commission. The requirement is "that the money received shall be impounded." Inasmuch as it was contemplated that the trust fund should never be received by plaintiff, it is ap-

parent that the reference to $4.00 a share is descriptive of the payment of which the "money received" and to be impounded is a part, and that the true intent of the proviso is to require to be impounded only such part of the $4.00 as remained after deducting therefrom the trust fund which was not to be received. The District Court was justified in such interpretation of the proviso.

In this view the subsequent contention of the commission, made after the property was by order of the court turned over to
245 plaintiff, cannot serve to enlarge the scope of the proviso and to bring within its meaning and intent that part of the fund which under the plan could not have been received by the new company and was not in fact to be paid to it. The commission could not maintain a suit to enforce an order of the tenor it insists should be given this order. It should be enjoined, therefore, in view of the construction which it now attempts to have placed upon the order, from attempting to execute the same by proceeding against plaintiff for not impounding that portion of the $4.00 per share to the possession of which plaintiff had no right.

If there is any question as to the correctness of this interpretation, or if the proviso is to be construed as the commission now contends, it seems to us there is no question as to its invalidity in so far as it applies to the trust fund of $1.50 per share. Under the interstate commerce act, sec. 20a, the commission is authorized to permit the issuance of securities if it finds that such issue "(a) is for some lawful object within the corporate purposes, and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the carrier of service to the public as a common carrier and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose." The commission has power to grant or deny the application in part or in whole, or to grant it "with such modifications and upon such terms and conditions as the commission may deem necessary or appropriate in the premises, and may from time to time, for good cause shown, make such supplemental orders in the premises as it may deem necessary or appropriate." This language limits the jurisdiction of the commission. That body found that the issuance of the securities was compatible with the public interest; that it was necessary or appropriate for and consistent with the proper performance by the carrier of service to the public as a
246 common carrier; that it would not impair the plaintiff's ability to perform that service; and that it was reasonable, necessary, and appropriate for such service. Admittedly each part of the order must be authorized by the statute or not at all. Obviously the terms and conditions of its order must be germane to the subject matter and fairly within the powers expressly delegated. The commission as a statutory body can not under the guise of administering this or any other provision of the law draw to itself any powers not conferred upon it by the act.

Thus it is to observed that the commission found the consideration for the securities to be adequate and the other conditions precedent to the exercise of its jurisdiction to exist. It appears further that the trust fund, of $1.50 per share, built up by assessment of the stockholders of the old company, was not surrendered to the new company (which alone was before the commission), was wholly uncapitalized in any new security, was in nowise subject to the jurisdiction of the new company, but was expressly retained by the reorganization managers for the express purpose of satisfying the legal expenses of the reorganization with the option to the managers of returning and surplus to the contributing stockholders or to the new company. In this situation might the commission, as it now contends it might, draw to itself jurisdiction of administration of such trust fund in an order approving and authorizing the securities by means of a proviso therein in the nature of a condition subsequent requiring that fund to be impounded with the commission? Or does the proviso permit of a construction to the effect that the commission had in mind the exercise of such jurisdiction?

The commission is a body of limited jurisdiction. It may not directly exercise power, grant of which had been withheld by Congress. (Interstate Commerce Commisison v. Cincinnati, N. O. & T. P. Ry., 167 U. S. 479; Harriman v. Interstate Commerce Commission, 211 U. S. 407; United States v. Louisville & Nash-
247 ville R. R., 236 U. S. 318; United States v. Pennsylvania R. R., 242 U. S. 208.) Owing its existence and its power to statutory enactment, it may not, by conditions subsequent attached to its approval, force a party before it to impound with its funds which do not enter into the issuance of securities the consideration for which it finds to be adequate. Its power to regulate can not be so exercised as to advance any policy which does not have its origin in the statute. (Morrill v. Jones, 106 U. S. 466, and Waite v. Macy, 246 U. S. 606.)

The commisison found that the value of the properties is somewhere between $640,000,000 and $900,000,000, and that the book value on May 1st, 1927, was $707,000,000. The total securities authorized, including preferred stock, was $569,116,549. The commission said: "Using the lowest figure, $640,000,000, and deducting from that amount the total par value of the securities enumerated, or approximately $569,100,000, would leave $70,900,000 as representing the value of the 1,174,060 shares of common stock without nominal or par value. * * * Without expressing any opinion as to the value of the no par value common stock, it would appear that upon applying the test suggested there will remain an unmortgaged equity in the properties sufficient to permit the bondholders to assign to the stockholders an interest therein and to support the issue of stock in the amounts proposed." Then, having found that the consideration was adequate, the commission proceeded, not to reserve jurisdiction to pass upon the adequacy thereof, but, according to its present contention, to attempt to bring before it the trust fund, not capi-

talized, in the custody and under the control of persons and parties other than the plaintiff. Obviously if the commission doubted the adequacy of the consideration and felt justified in the authorization of the issuance of the securities only upon the deposit of additional property of a value equivalent to the amount of the trust
248 fund, it would have had the right so to provide in its order, but to have done so would have been to have entered an order at variance with the one before the court, which finds the consideration adequate, and then, if the proviso be construed as defendant now contends it should be, arbitrarily attempts by conditions subsequent to bring before the commission a fund over which it has no jurisdiction. Such a construction of the proviso amounts to the assertion of arbitrary authority. Such power Congress does not possess and may not delegate. The commission may not substitute for the standards of the act standards of its own. (Southern Pacific Co. v. Interstate Commerce Commission, 219 U. S. 433.)

The validity of the order in so far as it requires the impounding of the remaining $2.50 per share is also questioned. It was provided in the reorganization plan that all cash paid in by stockholders, other than the trust fund, should be paid to plaintiff, first deducting, however, expenses of the receivership and foreclosure proceedings and expenses of plaintiff in the reorganization. The $2.50 per share, less said deductions, thus became a part of the cash to be delivered to the plaintiff and used by it as a part of its cash requirements aggregating $70,032,548.00. Against this cash there were to be issued only $60,698,820 in bonds, but all the property, including the cash, was to become part and parcel of the equity for the common and preferred stockholders of a value, as intimated by the commission, of not less than $70,000,000. So, though no part of the $2.50 was to be capitalized by the issuance of new bonds, such part of the same as remained after the payment of foreclosure expenses does become a part of the property back of the preferred and common stock. It was agreed that the stockholders should receive for each preferred share deposited one share of preferred stock and $24.00 par value of new bonds and for each common share deposited one share of common stock and $28.00 par value of new bonds. Consequently,
249 though no part of the $2.50 is represented by a new bond, it appears in the common and preferred capitalization of the plaintiff to the extent of that part of the same eventually received by the plaintiff.

Might the commission insist that as to the $2.50 per share payments therefrom should be approved either by the court or the commission and the balance impounded with the commission as a guaranty that the new stockholders should receive the same? Apparently the exercise of such jurisdiction is germane to the subject matter before the commission at the time of the entry of the order and fairly within its statutory powers. We see no valid reason why, in determining whether or not the issuance of the securities was compatible with public interests, the commission, exercising the discretion vested in it by Congress, might not rightfully insist that the equity for the

common and preferred stockholders should be subjected to the scrutiny and supervision of the commission or the court in determining the reasonableness of the expenditures to be made from the cash therein, the balance of which was to be delivered to plaintiff. Furthermore, the actions of the plaintiff in this respect tend to indicate that it so understood the jurisdiction of the commission and that it acquiesced in the validity of the order in so far as it applied to the $2.50 per share, for, after the commission had entered its order, plaintiff, asked this court to fix the foreclosure costs and filed with the commission its application to pay certain other of the expenses considered chargeable to this fund, thus indicating that plaintiff considered the proviso as to the $2.50 valid, germane, and a reasonable exercise of the commission's authority. Otherwise, obviously, it would not have voluntarily acceded thereto by following the procedure suggested by the commission. Moreover, in plaintiff's petition filed herein it is averred that the securities of plaintiff were
issued in consideration of the transfer to plaintiff of the rail-
250 way properties and of the obligation of the reorganization
managers to pay to the plaintiff the cash received by them other than the trust fund.

Inasmuch as the amount of the cash constituting a part of the property purchased for which the plaintiff was to issue its securities, including bonds and stock, was not definitely fixed but depended for final determination upon whatever the ultimate deductions on account of foreclosure and similar expenses might prove to be, it was within the commission's discretion to extend its supervisory authority over such items, for under the act of Congress carriers may issue securities only after investigation by the commission of the uses and purposes of the issue and the proceeds to be derived therefrom. In other words, the equity over underlying bonds in the railway properties and the cash subscribed becomes of material interest to the commission. Consequently, in view of the comprehensive administrative duties lodged in the commission, it was contemplated that in the exercise of its discretion it should have authority to determine the equity over underlying bonds, to examine the cash consideration going into the same, and to pass upon the reasonableness of the items of expenses deductible therefrom in so far as the same were not properly determinable by the court. (See R. R. Commission v. Southern Pac. Co., 264 U. S. 331.)

As to the moneys to be delivered to the plaintiff, the commission exercised its lawful supervisory discretion over proper deductions from said cash. The court will not interfere with the same: it will not attempt to substitute its judgment for that of the commission in administrative matters. (Procter & Gamble v. United States 225 U. S. 282.)

What we have said has to do not only with the merits of the case, but also with the motion to dismiss. The defendant grounds its
motion upon the proposition that the condition is inseparably
251 related to the remainder of the order, concerning which the
jurisdiction of the court is not invoked. Congress, however,

conferred upon the court jurisdiction to enjoin or set aside so much of an order as is invalid. The statute confers jurisdiction over all "cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission." A statute duly enacted or an order lawfully entered my not be annulled by the imposition of conditions subsequent beyond the original power even though such power be arbitrary. (Western Union Telegraph Co. v. Kansas, 216 U. S. 1; Pullman v. Kansas, 216 U. S. 56; Ludwig v. Western Union Telegraph Co., 216 U. S. 148; Southern Railway Co. v. Green, 216 U. S. 400; Terrall v. Burke Construction Co., 257 U. S. 529; Fidelity & Deposit Co. v. Tafoya, 270 U. S. 426; Frost Trucking Co. v. Railroad Commission, 271 U. S. 583; Panama Fire Insurance Co. v. Harding, 272 U. S. 494.) Even less tenable is the proposition that an administrative body may condition the validity of its lawful order upon void arbitrary provisos. An otherwise valid order is not affected by the addition of an invalid condition.

We conclude that, properly construed, the order did not affect the trust fund arising from the $1.50 per share; that the same was not within the commission's jurisdiction; that if the true intent of its order was to impound such part of the cash to that extent its order is arbitrary and invalid; that it was properly within its jurisdiction to insist that the cash which under the agreement would eventually go to the plaintiff should be subject to the commission's supervisory jurisdiction to the extent that the payments therefrom were not fixed by this court. The plaintiff's bill must prevail in so far as it applies to the trust fund arising from the $1.50 per share and must be denied as to any and all other prayers for relief.

A decree in accordance with this opinion may be submitted.

252

253 In United States District Court

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, plaintiff

vs.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS

In Equity, No. 8671

Final Decree

July 15, 1929

This cause came on to be heard at this term and was argued by counsel and thereupon, upon consideration thereof, it was

Ordered, adjudged, and decreed as follow viz:

1. That the motion of defendants to dismiss the petition of Chicago, Milwaukee, St. Paul and Pacific Railroad Company herein be and the same hereby is, overruled and denied;

2. That the United States and Interstate Commerce Commission, their officers, agents, and attorneys, be, and the same hereby are, perpetually restrained and enjoined from enforcing or attempting to enforce the certificate and order of the Interstate Commerce Commission entered January 4, 1928, or the supplemental order of said commission entered March 15, 1928, in respect of the issuance of certain securities by the petitioner herein, by the institution of either civil or criminal proceedings against the petitioner, its directors, officers, agents, or attorneys (1) by reason of the failure of the petitioner to obtain a sum equal to one dollar and fifty cents ($1.50) per share of the preferred and common stock of the Chicago, Milwaukee & St. Paul Railway Company paid by the stockholders thereof (in the petition and hereinafter called the trust fund) to the reorganization managers pursuant to the reorganization plan approved by this court; (2) by reason of the failure of the petitioner to impound said fund; and (3) by reason of any payment
254 heretofore or hereafter made out of said trust fund without a prior determination by the Interstate Commerce Commission of the amount so to be paid, of the compensation, fees, disbursements, and other expenses provided to be paid out of the trust fund by the reorganization plan.

3. That any and all parts of said certificate and order of the Interstate Commerce Commission entered January 4, 1928, and said supplemental order of said commission entered March 15, 1928, the purpose and intent of which was—

(a) to compel the petitioner to obtain possession of, or control over, in any manner whatsoever, said trust fund; to prohibit the payment out of the trust fund of the compensation of the reorganization managers and the committees for their services to the depositing bondholders and the depositing stockholders of the Chicago, Milwaukee & St. Paul Railway Company, fixed as provided in the reorganization plan, and the fees and disbursements of their counsel and of the depositaries and sub-depositaries under the reorganization plan; to require that the compensation of the reorganization managers and the committees for their services to the depositing bondholders and the depositing stockholders and said fees and disbursements of their counsel and of the depositaries and sub-depositaries under the reorganization plan, be submitted to the commission for determination by the commission of the amounts payable in respect thereof, or to relate in any manner whatsoever to said trust fund, is, and has at all times been, beyond the lawful authority of the Interstate Commerce Commission and wholly void, and the same be, and hereby is, perpetually set aside, suspended, and annulled and the enforcement thereof perpetually enjoined.

Further ordered, adjudged, and decreed that, except as herein granted, the prayers of the petitioner herein be, and they are hereby, denied.

SAMUEL ALSCHULER,
United States District Judge.
JAMES H. WILKERSON,
United States District Judge.
WALTER C. LINDLEY,
United States District Judge.

255 IN UNITED STATES DISTRICT COURT

Docket entries

Oct.	13,	1928.	Petition filed.
"	"	"	Security for Costs filed.
"	"	"	Exhibits A to M, inclusive, filed.
Nov.	"	"	Motion to dismiss and answer of Interstate Commerce Commission filed.
"	16,	"	Motion to dismiss—Answer of U. S.
Dec.	13,	"	Wilkerson, J.—Cause set for hearing January 28, 1929 (draft).
Jan.	28,	1929.	Wilkerson, J.—Cause set for hearing Feby. 18th, 11 a. m.
Feb.	14,	"	Wilkerson, J.—On motion pltff. leave to withdraw Exhibits A to M, to be returned in 3 days.
"	18,	"	Wilkerson, J.—Arguments heard on motion plaintiff for judgment and motion defts. to dismiss and taken under advisement. Briefs to be submitted 10 days.
"	27,	"	Wilkerson, J.—By agreement time to file briefs extended from Feby. 28, 1929, to and incl. March 4, 1929.
Mar.	4,	"	3 copies of brief for petitioner filed.
"	"	"	" " " " United States and Interstate Commerce Commission.
June	24,	"	Opinion of Judges Alschuler, Wilkerson & Lindley.
July	15,	"	Alschuler-Wilkerson-Lindley, Judges—Motion defendants to dismiss denied; order restraining United States and Interstate Commerce Commission from enforcing certificate and order entered January 4, 1928, etc. (draft).
Aug.	21,	"	Filed notice of appeal to Attorney General, State of Illinois.
"	"	"	Filed petition for appeal.
"	"	"	" assignment of errors.
"	"	"	Order allowing appeal to deft. (dft), Alschuler, Wilkerson, Lindley, J.
"	"	"	Issued citation.
Sept.	4,	"	Citation filed showing service.
"	"	"	Notice of appeal filed.
"	"	"	Præcipe for record filed.

256

257 In United States District Court

[Title omitted.]

Petition for appeal by United States and Interstate Commerce Commission

Filed August 21, 1929

United States of America and Interstate Commerce Commission, defendants, feeling themselves aggrieved by the final order or decree of the District Court entered July 15, 1929, pray an appeal therefrom to the Supreme Court of the United States.

The particulars wherein they consider the final order or decree erroneous are set forth in the assignment of errors on file to which reference is made.

They pray that a transcript of the record, proceedings, and papers on which the final order or decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

JOHN LORD O'BRIAN,
Assistant to the Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
DANIEL W. KNOWLTON,
Chief Counsel, Interstate Commerce Commission.

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259 In United States District Court

[Title omitted.]

Assignment of errors by and on behalf of the United States and Interstate Commerce Commission

Filed August 21, 1929.

United States of America and Interstate Commerce Commission, defendants, now come, by their respective counsel, and in connection with their petition for appeal, file the following assignment of errors on which they will rely on their appeal to the Supreme Court of the United States from the final order or decree of the District Court entered July 15, 1929.

The District Court erred—

1. In overruling and denying defendants' motion that the petition be dismissed for lack of jurisdiction in the court to entertain a petition for the setting aside, separately from the commission's grant of authority to issue securities, of the proviso prescribing, as "express conditions" to the authority granted, parts of the terms and considerations upon and for which the commission authorized the securities to be issued.

2. In setting aside, suspending and annulling, and enjoining enforcement of that part of said proviso to the commission's
260 order relating to the $1.50 per share fund, termed the "trust fund" in the commission's report and in the opinion and decree of the District Court, and which will hereinafter be so designated.

3. In holding, with respect to the provision of the proviso requiring plaintiff to impound the money received from the payment by stockholders in an amount equal to $4 a share and not to pay the same

out until authorized by the court as to payments subject to its jurisdiction or by the commission, "that the true intent of the proviso is to require to be impounded only such part of the $4.00 as remain after deducting therefrom the trust fund which was not to be received."

4. In holding that "If there is any question as to the correctness of this interpretation, or if the proviso is to be construed as the commission now contends, it seems to us there is no question as to its invalidity in so far as it applied to the trust fund of $1.50 per share."

5. In not holding that by said proviso the commission prescribed requirements necessitating the securing by plaintiff, as a condition precedent to its issuance of securities, of a modification of its earlier arrangements tentatively entered into by it with purchasers and which were submitted for approval when applying to the commission for authority to issue securities.

6. In holding that plaintiff could lawfully issue its securities pursuant to said prior tentative arrangements in disregard of the modified terms and considerations prescribed in said proviso, upon and for which the commission authorized it to issue its securities.

7. In holding that observance of the terms prescribed in said proviso or condition was not essential to the integrity of the commission's statutory findings supporting said issue of securities, despite the fact that the commission's report expressly states that it made said findings "subject to the observance of the conditions in the certificate and order."

8. In holding that it was beyond the commission's authority to attach, as a condition to the authority granted plaintiff to issue securities, the requirement of the proviso relating to said trust fund.

261 9. In not dismissing the petition.

JOHN LORD O'BRIAN,
Assistant to the Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
DANIEL W. KNOWLTON,
Solicitor for Interstate Commerce Commission.

262
263

In United States District Court

[Title omitted.]

Order Allowing Appeal

Aug. 21, 1929

In the above-entitled cause, United States of America and Interstate Commerce Commission, defendants, having made and filed their petition praying an appeal to the Supreme Court of the United States from the final order or decree of the District Court, entered

July fifteenth, 1929, and having also made and filed an assignment of errors, and having in all respects conformed to the statutes and rules of court in such case made and provided:

It is ordered and decreed that the appeal be, and the same is hereby, allowed as prayed and made returnable within thirty (30) days from the date hereof, and the clerk is directed to transmit forthwith a properly authenticated transcript of the record, proceedings, and papers on which the order or decree was made and entered to the Supreme Court of the United States.

Dated August 21, 1929.

SAMUEL ALSCHULER,
United States Circuit Judge.
JAMES H. WILKERSON,
WALTER C. LINDLEY,
United States District Judges.

264

265 In United States District Court

[Title omitted.]

Notice of appeal to the Attorney General of the State of Illinois

Filed Aug. 21, 1929

To honorable OSCAR E. CARLSTROM,
Attorney General of the State of Illinois,
Springfield, Illinois.

You are hereby notified that the defendants, United States of America, and Interstate Commerce Commission, have taken an appeal from the final order or decree of the District Court, entered July fifteenth, 1929, to the Supreme Court of the United States, and that the order allowing the appeal makes the same returnable within thirty (30) days from the date thereof.

This notice is given to you pursuant to urgent deficiencies act, October 22, 1913 (38 Stat. 221).

JOHN LORD O'BRIAN,
Assistant to the Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
DANIEL W. KNOWLTON,
Solicitor for Interstate Commerce Commission.

Service of the foregoing notice and the receipt of a copy thereof are hereby acknowledged this 21st day of August, 1929.

OSCAR E. CARLSTROM,
Attorney General, State of Illinois.

266

267 In United States District Court

[Title omitted.]

Notice of Appeal

(Filed Sept. 4, 1929)

To Chicago, Milwaukee, St. Paul and Pacific Railroad Company, plaintiff:

Please take notice that, pursuant to the statutes and rules of court in such case made and provided, United States of America and Interstate Commerce Commission, defendants in the above-entitled cause, and each of them, do hereby appeal to the Supreme Court of the United States from the final order or decree of the District Court entered on the fifteenth day of July, 1929, which set aside, annulled, suspended, and permanently enjoined that portion of a certain certificate and order of the Interstate Commerce Commission in the proceeding entitled "Finance Docket No. 6440, Chicago, Milwaukee & St. Paul reorganization," 131 I. C. C. 673, filed January 4, 1928, and supplemental order entered March 13, 1928, which provided and required that the authority therein granted to issue certain securities was upon the express condition, among others, that the applicant, Chicago, Milwaukee, St. Paul & Pacific Railroad Company, should impound in a separate fund the money received from the payment by holders of preferred and common stock in an amount equal to $4 a share which should not be paid out unless and until so authorized by order of the court in respect to payments subject to
268 the court's jurisdiction or by the commission, but which certificate and order was annulled and enjoined by the court only to the extent that and in so far as said condition thereof included and required the impounding, as a part of said $4 per share, $1.50 per share (called the "trust fund" in the report and order of the commission and in the court's opinion and decree), which was to be set aside for the compensation of the reorganization managers, protective committees, and the fees of their counsel, depositaries, and expenses in connection therewith, and not paid out unless and until so authorized by order of the court or by the commission.

JOHN LORD O'BRIAN,
Assistant to the Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
DANIEL W. KNOWLTON,
Solicitor for Interstate Commerce Commission.

Service of the foregoing notice of appeal and the receipt of a copy thereof are hereby acknowledged this 4th day of September, 1929.

H. H. FIELD & O. W. DYNES,
Solicitor for Chicago, Milwaukee, St. Paul & Pacific Railroad Company.

269 In United States District Court

[Title omitted.]

Præcipe for transcript of record

To the Clerk:

Please prepare a transcript of the record in the above-entitled cause in the matter of the appeal of the United States of America and Interstate Commerce Commission and include therein, in the order given below, the following matter, viz:

1. Petition and Exhibits A to M, inclusive, attached thereto.
2. Motion to dismiss and answer of the United States.
3. Motion to dismiss and answer of the Interstate Commerce Commission.
4. Opinion of the court.
5. Final decree.
6. All docket entries in their appropriate order.
7. Petition for appeal.
8. Assignment of errors.
9. Order allowing appeal.

270 10. Notice of appeal and acknowledgment of service thereof.

11. Notice of appeal to the Attorney General of the State of Illinois and acknowledgment of service thereof.

12. Præcipe for record.
13. Citation on appeal.

John Lord O'Brian,
Assistant to the Attorney General.
Elmer B. Collins,
Special Assistant to the Attorney General.
Daniel W. Knowlton,
Solicitor for Interstate Commerce Commission.

Service of the foregoing præcipe for transcript of record and the receipt of a copy thereof are hereby admitted and acknowledged this 4th day of September, 1929.

H. H. Field & O. W. Dynes,
Solicitors for Chicago, Milwaukee, St. Paul & Pacific Railroad Company.

271 [Clerk's certificate to foregoing transcript omitted in printing.]

272 [Citation in usual form showing service on H. H. Field and O. W. Dynes, filed Sept. 4, 1929, omitted in printing.]

273 In Supreme Court of the United States

Statement of points upon which United States intends to rely and designation to print entire record

Filed Sept. 16, 1929

United States intends to rely upon the contentions that the specially constituted District Court erred—

1. In overruling the motion to dismiss the petition for lack of jurisdiction to entertain a petition seeking to annul and enjoin, separately from the commission's grant of authority to issue the securities, the proviso contained in such authorization prescribing "express conditions" to the authority granted, such conditions being material parts of the terms upon which, and the consideration for which, the securities were authorized to be issued.

2. In holding that the commisison was without power to attach, as a term or condition to its grant of authority to issue the securities, the requirement of the proviso that the $4 per share fund be impounded and not paid out except on approval of the commis-
274 sion or the court, in so far as that requirement related to an included the so-called "trust fund" of $1.50 per share.

United States deems the entire record, as filed, to be necesasry for the consideration of the contentions above enumerated.

CLAUDE R. BRANCH,
Acting Solicitor General.
J.

Dated September —, 1929.

Service of a copy of the foregoing statement of points is hereby acknowledged on behalf of the appellee this — day of September, 1929.

———— ————,
Counsel for Appellee.

275 [File indorsement omitted.]

276 In Supreme Court of the United States

Statement of points upon which Interstate Commerce Commission intends to rely and of the parts of the record deemed necessary for the consideration thereof

Filed Sept. 26, 1929

Interstate Commerce Commisison intends to rely upon the contentions that the specially constituted District Court erred—

1. In overruling the motion to dismiss the petition for lack of jurisdiction to entertain a petition seeking to annul and enjoin, separately from the commission's grant of authority to issue the securities, the proviso contained in such authorization prescribing "express conditions" to the authority granted, such conditions being material parts of the terms upon which, and the consideration for which, the securities were authorized to be issued.

277 2. In holding that the commission was without power to attach, as a term or condition to its grant of authority to issue the securities, the requirement of the proviso that the $4 per share fund be impounded and not paid out except on approval of the commission or the court, in so far as that requirement related to and included the so-called "trust fund" of $1.50 per share.

Interstate Commerce Commisison deems the entire record, as filed, to be necessary for the consideration of the contentions above enumerated.

DANIEL W. KNOWLTON,
Chief Counsel.

Dated September —, 1929.

Service of a copy of the foregoing statement of points is hereby acknowledged on behalf of the appellee this ——— day of September, 1929.

———— ————,
———— ————,
Counsel for Appellee.

279 [File indorsement omitted.]

[Indorsement on cover:] File No. 34,526. N. Illinois, D. C., U. S. Term No. 395. The United States of America and Interstate Comerce Commission, appellants, vs. Chicago, Milwaukee, St. Paul and Pacific Railroad Company. Filed September 12, 1929. File No. 34,526.

U. S. GOVERNMENT PRINTING OFFICE: 1929

IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1929

No. 395

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, Appellants,

vs.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

It is hereby stipulated by and between the parties hereto that the annexed certified copy of a Decree of said District Court entered January 19, 1927, which was offered and received in evidence on behalf of the plaintiff at the hearing of this cause in said District Court, be added to the record on file in the Supreme Court of the United States, in the appeal herein.

Dated Chicago, April 19, 1930.

George E. Q. Johnson, U. S. Attorney; John Lord O'Brian, The Assistant to the Atty. Genl., Solicitors for Appellants. F. H. Wood & H. H. Field, Solicitors for Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

At a term of the District Court of the United States for the Northern District of Illinois, Eastern Division, in the Seventh Judicial Circuit, at the city of Chicago, State of Illinois, on the 19th day of January, 1927.

Present: Hon. James H. Wilkerson, United States District Judge.

In Equity. Consolidated Cause No. 4931

GUARANTY TRUST COMPANY OF NEW YORK and MERREL P. CALLAWAY, as Trustees, Complainants,

against

CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY et al., Defendants

In Equity. No. 4931

GUARANTY TRUST COMPANY OF NEW YORK and MERREL P. CALLAWAY, as Trustees, Complainants,

against

CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY, H. E. BYRAM, Mark W. Potter and Edward J. Brundage, as Receivers of Chicago, Milwaukee and St. Paul Railway Company; Binkley Coal Company, The Farmers' Loan and Trust Company, United States Mortgage and Trust Company, William Nelson Cromwell and Bankers Trust Company, Defendants

In Equity. No. 5065

UNITED STATES TRUST COMPANY OF NEW YORK and EDWARD W. SHELDON, as Trustees, Complaints,

against

CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY, H. E. BYRAM, Mark W. Potter, and Edward J. Brundage, as Receivers of the Property of Chicago, Milwaukee and St. Paul Railway Company, Chicago, Milwaukee and Puget Sound Railway Company and Guaranty Trust Company of New York and Merrel P. Callaway, Trustees, Defendants

In Equity. No. 4696

BINKLEY COAL COMPANY, Plaintiff,

against

CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY, Defendant

DECREE CONFIRMING SALE AND APPROVING DEED

It is therefore ordered, adjudged and decreed as follows:

First. The provisions of the Reorganization Plan affecting the respective priorties of all persons and corporations

interested in the Railway Company and its property are equitable and the Reorganization Plan contains an equitable and timely offer of participation in the reorganization thereby proposed to all persons entitled thereto, of which due and reasonable notice has been given; and all complaints as to the equity of the provisions of the Reorganization Plan made at said hearing are hereby found without merit and overruled and all persons, firms and corporations are forever barred from making hereafter any complaint in respect of the Reorganization Plan or any provision thereof. If on or before March 3, 1927, the Congress of the United States shall enact legislation providing for the refunding of the indebtedness of railroads to the United States substantially in the form of the Gooding bill now pending in the Senate, and such legislation shall become law, the deeds herein authorized shall not be delivered until the Purchasers shall report to this Court what efforts the Reorganization Managers under the Reorganization Plan have made to bring about the refunding of the indebtedness of the Railway Company to the United States and the modification of the Reorganization Plan to that end, for such action as this Court may determine; and this Court reserves the exclusive jurisdiction, upon the filing of such report, to modify this order or to make such further orders as it may determine.

If prior to the execution and delivery of the deeds herein authorized, the Reorganization Plan shall be modified, the Purchasers shall file a copy of such modifications with this Court. Thereupon the Special Master shall give notice, in the manner provided in Article XVII of the Final Decree, of the filing of such modifications and of the hearing to be held thereon before this Court fourteen days after the first publication of such notice, and this Court reserves the exclusive jurisdiction at such hearing to hear complaints as to the equity of the provisions of such modifications affecting the respective priorties of all persons and corporations interested in the Railway Company and its property, from all bondholders and other creditors, secured or unsecured, or stockholders of the Railway Company, who before the date of such hearing shall file, with leave of Court, their petitions herein for the purpose, specifying in reasonable

detail the particulars in which such modifications are alleged by them to be inequitable, and this Court reserves the exclusive jurisdiction to determine whether the provisions as to which such complaints are so made are equitable, and if this Court shall determine that the Reorganization Plan as so modified is inequitable, or that the Reorganization Plan as so modified does not contain an equitable and timely offer of participation in the reorganization thereby proposed, to all persons entitled thereto, the deeds herein authorized shall not be delivered until such modifications shall be withdrawn or shall be modified in such manner as the Court may approve.

Ninth. The deeds herein authorized shall not be delivered to the Railroad Company, until the Railroad Company shall have been authorized by the Interstate Commerce Commission to issue the securities provided to be issued by it under the Reorganization Plan or any modification thereof, which may be submitted to this Court as herein provided. Nothing in this decree shall require the Purchasers to take the property purchased at said sale, or any part thereof, or to pay, satisfy and discharge any part of the purchase price thereof or any amounts which are payable as part of the purchase price thereof, until such time as the issue of the securities to be issued pursuant to the Reorganization Plan or any modification thereof and the acquisition by the Railroad Company of the property sold shall be approved by any public authorities having jurisdiction in the premises.

Dated January 19, 1927.

James H. Wilkerson, United States District Judge.

In the District Court of the United States of America for the Northern District of Illinois, Eastern Division

I, Charles M. Bates, Clerk of the District Court of the United States of America for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and correct copy of an order made and entered in said Court on the 19th day of January, A. D. 1927 as fully as the same appears of record in my office.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said Court at my office in Chicago, in said District, this 18th day of April, A. D. 1930.

Charles M. Bates, Clerk. (Seal of United States District Court, Northern District of Illinois.)

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1929

No. 395

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Appellants,

vs.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, Respondent

STIPULATION AND DESIGNATION OF ADDITIONAL PART OF RECORD TO BE PRINTED

It is hereby stipulated and agreed by and between the parties hereto that, in addition to parts of the record herein, filed in this Court, which have already been printed, the following shall be printed by the Clerk for the hearing of the case:

The paragraphs numbered "First" and "Ninth" of a decree of the District Court of the United States for the Northern District of Illinois, entitled "Decree Confirming Sale and Approving Deed", entered January 19, 1927, in the case of Guaranty Trust Company of New York and Merrel P. Calloway as Trustees, Complainants, against Chicago, Milwaukee and St. Paul Railway Company, et al., Defendants, In Equity, Consolidated Cause, No. 4931.

Dated April 22, 1930.

John Lord O'Brian, the Assistant to the Attorney General, Solicitors for Appellants. H. H. Field, Frederick H. Wood, Solicitors for Respondent.

FILE COPY

Office Supreme Court, U. S.
FILED
OCT 12 1929
CHARLES ELMORE CROPLEY
CLERK

No. 385 / 0

In the Supreme Court of the United States

OCTOBER TERM, 1929

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

STATEMENT OF JURISDICTION

In the Supreme Court of the United States

OCTOBER TERM, 1929

No. 395

THE UNITED STATES OF AMERICA AND INTERSTATE Commerce Commission, appellants

v.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILroad Company

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

STATEMENT OF JURISDICTION

In compliance with Rule 12 of this Court, appellant submits herewith its statement showing the basis of this Court's jurisdiction in the above-entitled cause:

A

STATUTES

Section 238 of the Judicial Code as amended by Act of February 13, 1925 (c. 229, 43 Stat. 936, 938), paragraph (4) (U. S. C. Title 28, Sec. 345).

Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 208, 219, 220; U. S. C. Title 28, Sec. 47).

75033—29

B

DATE OF DECREE AND APPLICATION FOR APPEAL

The final decree was entered July 15, 1929. (R. 204.)

The application for appeal was filed, and the order allowing the appeal was entered, August 21, 1929. (R. 206–208.) Notices of appeal with service acknowledged were filed August 21, 1929, and September 4, 1929. (R. 209, 210.) The case was docketed in this Court on September 12, 1929.

C

NATURE OF THE CASE

The suit was brought by the new railroad company, the appellee, to enjoin and annul, in part, a certificate and order of the Interstate Commerce Commission entered January 4, 1928, and supplemental order entered March 13, 1928, in proceedings entitled "Chicago, Milwaukee & St. Paul Reorganization," Finance Docket No. 6240, 131 I. C. C. 673; 138 I. C. C. 291. (R. 1–16.) The certificate and order authorized appellee, among other things, to issue in connection with a reorganization plan certain securities which were to be exchanged for stock of the old company upon the stockholders' depositing their stock and paying certain amounts of cash per share. (R. 163–165.)

The order contained the following language (R. 164):

> * * * Provided, however, and the authority herein is granted upon the express

> conditions, that the applicant (a) shall not pay any underwriting fees in connection with the proposed issue of securities; and (b) shall impound in a separate fund the money received from the payment by holders of preferred and common stock in an amount equal to $4 a share, which shall not be paid out unless and until so authorized by order of the court in respect to payments subject to the court's jurisdiction or by this commission.

The report of the Commission contained the following language (R. 140):

> Of the $4 a share assessment to be paid by the stockholders, $1.50 a share on the existing preferred and common stock is to be set aside for the compensation of the reorganization managers, various protective committees, and the fees of their counsel, depositaries, and expenses in connection therewith.
> * * *

The specially constituted District Court overruled motions of the United States and the Commission to dismiss the petition for lack of jurisdiction to enjoin and annul, separately from the Commission's grant of authority to issue the securities, the express requirement or terms and conditions to the authority granted by the order. (R. 196–204.)

On the merits the court held that if the language of the Commission's order, quoted above, required appellee to obtain and impound the $1.50 per share above referred to, the order was invalid on the ground that such fund, being uncapitalized in any

new security and being set aside for the express purpose of satisfying expenses of the reorganization, was beyond the Commission's jurisdiction. The final decree (R. 205) permanently enjoins the Commission—

> * * * from enforcing or attempting to enforce the certificate and order of the Interstate Commerce Commission entered January 4, 1928, or the supplemental order of said commission entered March 15, 1928, in respect of the issuance of certain securities by the petitioner herein, by the institution of either civil or criminal proceedings against the petitioner, its directors, officers, agents, or attorneys (1) by reason of the failure of the petitioner to obtain a sum equal to one dollar and fifty cents ($1.50) per share of the preferred and common stock of the Chicago, Milwaukee & St. Paul Railway Company paid by the stockholders thereof (in the petition and hereinafter called the trust fund) to the reorganization managers pursuant to the reorganization plan approved by this court; (2) by reason of the failure of the petitioner to impound said fund; and (3) by reason of any payment heretofore or hereafter made out of said trust fund without a prior determination by the Interstate Commerce Commission of the amount so to be paid, of the compensation, fees, disbursements, and other expenses provided to be paid out of the trust fund by the reorganization plan.

D

CASES SUSTAINING JURISDICTION

Venner v. *Michigan Central Railroad Co.*, 271 U. S. 127.

Colorado v. *United States*, 271 U. S. 153.

Home Furniture Co. v. *United States*, 271 U. S. 456.

Cleveland, etc., Ry. v. *United States*, 275 U. S. 404.

B. & O. R. R. v. *United States*, 277 U. S. 291.

WILLIAM D. MITCHELL,
Attorney General.

JOHN LORD O'BRIAN,
The Assistant to the Attorney General.

DANIEL W. KNOWLTON,
Chief Counsel, Interstate Commerce Commission.

CLAUDE R. BRANCH,

ELMER B. COLLINS,
Special Assistants to the Attorney General.

OCTOBER, 1929.

U. S. GOVERNMENT PRINTING OFFICE: 1929

APR 2 193

FILE COPY

No. [redacted] / 0

In the Supreme Court of the United States

OCTOBER TERM, 1929

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

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In the Supreme Court of the United States

OCTOBER TERM, 1929

No. 395

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, appellants

v.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

OPINIONS BELOW

The opinion of the specially constituted District Court (R. 196) is reported in 33 F. (2d) 582.

The report of the Interstate Commerce Commission (R. 117) appears as *Chicago, Milwaukee & St. Paul Reorganization,* 131 I. C. C. 673.

JURISDICTION

The decree of the District Court was entered July 15, 1929. (R. 204.) Petition for appeal was filed August 21, 1929, and was allowed on the same day. (R. 206, 208.)

Jurisdiction of this Court rests on the Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 208, 219, 220 (U. S. C. Sup. III, Title 28, Sec. 47a), and Subsection 4, Section 238 of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, 938 (U. S. C., Title 28, Sec. 345).

QUESTIONS PRESENTED

Appellee purchased, subject to proper approval of the issue of its securities, assets of a railroad sold in foreclosure proceedings pursuant to a Plan of Reorganization promulgated by two banking houses (hereinafter sometimes called "the Managers"). The Plan required stockholders of the railroad desiring to participate in the reorganization to make a cash payment which, except to the extent of $4 per share, was to be capitalized in bonds of the new company (subsequently appellee). The Plan permitted the Managers to retain $1.50 per share of this payment (hereinafter sometimes called "the $1.50 fund") and pay out of this fund their own fees and the fees of certain Committees of security holders. The Plan provided that the Managers should pay any balance remaining to appellee or return it *pro rata* to the depositing stockholders, if the Managers should so determine.

The Interstate Commerce Commission approved the issue of appellee's securities on the express condition that appellee impound the money received from the $4 a share assessment to be paid by stock-

holders and disburse the same only when so authorized by the Commission or the court. Appellee, after issuing the securities so authorized, brought a petition in equity, which *inter alia* prayed for the annulment of any part of the order of the Commission which should be held to compel appellee (1) to obtain possession of the $1.50 fund and (2) to submit to the Commission any matters relating to payments from it.

The questions presented are whether the condition of the order of the Commission approving the issue of appellee's securities applied to the $1.50 fund and, if it so applied, whether the condition is void because beyond the scope of the Commission's statutory authority.

The further question presented is whether, even if the condition was beyond the statutory authority of the Commission, appellee may sue to enjoin enforcement thereof after appellee had availed itself of the authority granted in the order to which the condition attached; in other words, whether the court has jurisdiction to strike down a condition to an order of the Commission where the effect would be to substitute its judgment for that of the Commission upon an administrative question.

STATUTE INVOLVED

The pertinent provisions of Section 20a of the Interstate Commerce Act as enacted by the Transportation Act, 1920, c. 91, 41 Stat. 456, 494, 496 (U. S. C., Title 49, Sec. 20a) read as follows:

(2) * * * it shall be unlawful for any carrier to issue any share of capital stock or any bond or other evidence of interest in or indebtedness of the carrier (hereinafter in this section collectively termed "securities") or to assume any obligation or liability as lessor, lessee, guarantor, indorser, surety, or otherwise, in respect of the securities of any other person, natural or artificial, even though permitted by the authority creating the carrier corporation, unless and until, and then only to the extent that, upon application by the carrier, and after investigation by the Commission of the purposes and uses of the proposed issue and the proceeds thereof, or of the proposed assumption of obligation or liability in respect of the securities of any other person, natural or artificial, the Commission by order authorizes such issue or assumption. The Commission shall make such order only if it finds that such issue or assumption: (a) is for some lawful object within its corporate purposes, and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the carrier of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose.

(3) The Commission shall have power by its order to grant or deny the application as made, or to grant it in part and deny it in part, or to grant it with such modifications

and upon such terms and conditions as the Commission may deem necessary or appropriate in the premises, and may from time to time, for good cause shown, make such supplemental orders in the premises as it may deem necessary or appropriate, and may by any such supplemental order modify the provisions of any previous order as to the particular purposes, uses, and extent to which, or the conditions under which, any securities so theretofore authorized or the proceeds thereof may be applied, subject always to the requirements of the foregoing paragraph (2).

* * * * *

(10) The Commission shall require periodical or special reports from each carrier hereafter issuing any securities, including such notes, which shall show, in such detail as the Commission may require, the disposition made of such securities and the application of the proceeds thereof.

(11) Any security issued or any obligation or liability assumed by a carrier, for which under the provisions of this section the authorization of the Commission is required, shall be void, if issued or assumed without such authorization therefor having first been obtained, or if issued or assumed contrary to any term or condition of such order of authorization as modified by any order supplemental thereto entered prior to such issuance or assumption; * * *. Any director, officer, attorney or agent of the carrier

who knowingly assents to or concurs in any issue of securities or assumptions of obligation or liability forbidden by this section, or any sale or other disposition of securities contrary to the provisions of the Commission's order or orders in the premises, or any application not authorized by the Commission of the funds derived by the carrier through such sale or other disposition of such securities, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $1,000 nor more than $10,000, or by imprisonment for not less than one year nor more than three years, or by both such fine and imprisonment, in the discretion of the court.

STATEMENT

The properties of the Chicago, Milwaukee & St. Paul Railway Company (hereinafter sometimes called "the old company") were placed in receivership in the United States District Court for the Northern District of Illinois on March 18, 1925. (R. 118–119.) After certain protective Committees for security holders had been formed, Kuhn, Loeb & Company and the National City Company formulated, as Managers, a Reorganization Plan. This Plan, as subsequently modified, was approved by all but one of the various protective Committees. (R. 123.)

Common and preferred stockholders of the old company who accepted the Plan by depositing their

stock thereunder were required to pay $32 and $28 per share, respectively. For each share of common stock so deposited, the depositor was to receive in exchange one share of common stock and $28 principal amount of 5% bonds of the new company, and for each share of preferred stock so deposited the depositor was to receive in exchange one share of preferred stock and $24 principal amount of 5% bonds of the new company. (R. 50–51, 54.) The assessments on stockholders, on the basis of outstanding stock, aggregated about $70,000,000. Out of this sum the Plan called for the payment of certain specific obligations totalling about $53,500,000. The balance of about $16,500,000 was to provide for additions and betterments; new equipment and other capital expenditures; working capital; settlement of claims; organization, franchise, and other taxes; foreclosure, receivership, and reorganization expenses. (R. 39–40.)

All of this $16,500,000 was not made available to the new company. The Plan permitted the Managers to retain $1.50 a share, amounting to about $3,500,000 (R. 140), and to pay out of this $1.50 fund their own fees, which were fixed at about $1,044,000 (R. 140–141), and the fees of the various Committees and the fees and disbursement of their counsel, depositaries, and subdepositaries. (R. 39–40.) The Managers could in their unrestricted discretion fix the compensation of the Committees, the depositaries and subdepositaries, and of all

others, except themselves and underwriting syndicates, entitled to compensation in the reorganization. (R. 56.) The Managers were to be the sole judges of the propriety or expediency of the expenses and liabilities, including counsel fees, of all Committees representing security holders, and all accounts of Committees when approved by the Managers were to be binding and conclusive upon all parties interested therein. (R. 88.)

In November, 1926, the properties of the old company were sold under final decree of foreclosure to Robert T. Swaine and Donald C. Swatland (hereinafter sometimes called "the Purchasers") acting as agents for the Managers, who in turn were acting for the depositing security holders. In January, 1927, the District Court confirmed the sale and held the Plan valid. The decree was affirmed on appeal by the Circuit Court of Appeals for the Seventh Circuit (*Jameson* v. *Guaranty Trust Co.*, 20 F. (2d) 808), and a writ of certiorari was denied by this Court on November 28, 1927. (275 U. S. 569.) The decree confirming the sale provided that the deeds therein authorized should not be delivered to the new company until it should have been authorized by the Commission to issue the securities provided in the Plan, and the purchasers were not required to take any part of the properties sold until after the issue of these securities. (R. 7–8.)

Appellee was organized on March 31, 1927. On April 11, 1927, it entered into an agreement with

the old company, the Purchasers and Managers.[1] (R. 8.) Appellee agreed to pay and discharge the purchase price for the property of the old company and to indemnify the Purchasers against any liability whatsoever incurred by them by reason of their bid for this property. (R. 95–96.) Appellee also agreed to reimburse the Managers for any payments made by them at any time under the Plan in carrying out the reorganization (other than items chargeable against the $1.50 fund) and to indemnify them against all liabilities and charges whatsoever (other than those covered by the $1.50 fund) in carrying out the Plan. (R. 99.) Appellee agreed to issue to the Managers the securities provided in the Plan. (R. 97–98.) The Managers agreed to transfer and assign to appellee all bonds of and claims against the old company deposited with them under the Plan (R. 96), or to apply these bonds and claims to the payment of the purchase price of the property under the decree of foreclosure (R. 97), and agreed to pay over to appellee all cash received by them under the Plan (other than the $1.50 fund) and remaining after the Managers had paid all reorganization expenses permitted or contemplated by the Plan. (R. 98.) The agreement was subject to the approval of the issue of appellee's

[1]A Delaware company to whom the Purchasers had previously assigned all their interest in the properties purchased was also a party to this agreement. (R. 94.) This company joined in the assignment made by the Purchasers to appellee. (R. 95.)

securities by the appropriate public authority. (R. 100.)

On April 12, 1927, appellee applied to the Commission requesting it to approve the issue of the securities provided in the Plan, as well as to grant appellee certain other authority necessary for carrying out the Plan. (R. 111–112, 118.) The Commission on January 4, 1928, issued its report and order. (R. 117, 163.) The report found that the Plan was defective when regarded in the abstract and in the light of a possible ideal of sound financial theory. (R. 137.) It stated that the Commission had permitted to become effective a number of reorganizations involving capital structures which, like the one under consideration, left something to be desired from the point of view of fully sound financial standards, and that this had been done solely upon the ground that the major public interest seemed to require that the properties concerned should be released from receivership at the earliest possible moment. (R. 141.) It mentioned the stockholders' assessment which, to the extent of $4 a share, was not to be capitalized in new "securities." (R. 125.) It stated that the evidence submitted of total reorganization expenses consisted of estimates over eighteen months old and that this evidence was insufficient to enable the Commission to arrive at an opinion as to their reasonableness and the public interest affected thereby. (R. 141.) The report continued (R. 141):

> Jurisdiction of this proceeding will be reserved for the purpose of taking further testimony as to the expenses of the reorganization, the nature and scope of the services performed for the compensation and fees claimed, and any other matters appropriate in the premises, and for the entering of pertinent orders in connection therewith. The authority herein granted to the applicant to issue its securities in accordance with the Plan will be upon the express condition that the applicant shall impound in a separate fund the money received from the payment of $4 a share by the holders of preferred and common stock and shall not pay from such fund any amounts unless and until authorized by due order of court or by this commission.

The Commission's order made the report a part thereof (R. 163) and made its approval of the issue of appellee's securities subject to the following (R. 164):

> Provided, however, and the authority herein is granted upon the express conditions, that the applicant (a) shall not pay any underwriting fees in connection with the proposed issue of securities; and (b) shall impound in a separate fund the money received from the payment by holders of preferred and common stock in an amount equal to $4 a share, which shall not be paid out unless and until so authorized by order of the court in respect to payments subject to the court's jurisdiction or by this commission.

On January 12, 1928, appellee issued to the Managers the securities so authorized and they in turn distributed these securities to the depositing stockholders and bondholders of the old company. The Managers applied deposited bonds of the old company to payment of the purchase price for the latter's property and paid appellee, or applied or held for its account, the cash assessment on the stockholders, less $1.50 a share. (R. 9–10, 185.)

Appellee on January 27, 1928 (R. 169), filed with the Commission a supplemental application requesting authority to devote the cash received from the Managers to payment of certain actual and estimated reorganization expenses, and to other corporate purposes. (R. 167.) This application alleged that the assessments on stockholders had been called for payment on or before February 16, 1928, with an option to the stockholders to defer payment of one-half of the assessment until June 1, 1928. (R. 165–166.)

The Commission on March 13, 1928, issued a supplemental order (R. 170) which authorized appellee—

> * * * from the fund to be furnished by the payment of $4 a share * * * (1) to use for its lawful corporate purposes such sum or sums of money, other than for the expenses of reorganization, as shall not be needed for the reorganization expenses, and (2) to pay from time to time out of said fund (a) out-of-pocket expenses paid or in-

> curred in an aggregate amount not exceeding $725,207.73, with interest on any amounts advanced for those purposes, (b) such additional amounts for estimated expenses of a like character, not exceeding $151,900, and (c) any and all amounts which may be or become payable for taxes or governmental charges in connection with the organization of the applicant, its qualification in the States in which it is engaged in business, and the issue and transfer of its securities and the recordation thereof.

The order further directed appellee to file monthly reports showing the amounts used or expended under the authority of the order and the actual expenditures made or incurred and the purpose thereof in lieu of the estimates given in the supplemental application. (R. 171.)

Pursuant to said order appellee filed with the Commission its reports dated April 11, 1928, May 12, 1928, June 14, 1928, July 14, 1928, August 14, 1928, and September 12, 1928. (R. 11.) Neither these reports nor appellee's application filed January 27, 1928, included any item which under the Plan was payable out of the $1.50 fund. (R. 165, 171, 173, 175, 176, 177, 178.) On or about May 22, 1928, appellee filed with the Commission its second supplemental application requesting authority to pay certain reorganization expenses totaling $180,437.80. (R. 12, 180–181.) The Commission did not, prior to the filing of the present suit, authorize payment of these expenses. (R. 12.)

On October 13, 1928, appellee instituted the present suit by filing a petition in equity in the United States District Court for the Northern District of Illinois under the Urgent Deficiencies Act of October 22, 1913, to enjoin the United States and the Commission from enforcing the Commission's order of January 4, 1928, and its supplemental order of March 13, 1928, with respect to the $1.50 fund and with respect to the requirement that reorganization expenses be submitted to the Commission for its determination. (R. 1, 14–16.) When this suit was brought the Managers had not turned over to appellee any part of the $1.50 fund. (R. 13, 187.) The petition alleged that representatives of the Commission had advised appellee that the Commission would not grant appellee any further authority to pay reorganization expenses until it had obtained from the Managers the entire $1.50 fund. (R. 12.) It further alleged that the Commission and the United States had threatened, if appellee should not immediately procure the $1.50 or if payment of reorganization expenses should be made therefrom without prior approval by the Commission, to institute criminal or civil proceedings against appellee for violation of the Commission's order of January 4, 1928. (R. 14.)

The United States and the Commission each filed a motion to dismiss and an answer. (R. 181, 188.) The answers denied that the Commission had authorized any one to speak for it in respect of the disposition which it would make of any application

to it for authority to pay reorganization expenses. (R. 186–187, 194.) The answers also denied that the defendants had threatened criminal or civil proceedings against appellee as alleged in the petition, but admitted that where, as in the instant case, securities had been issued contrary to the terms and conditions of the authority given by the Commission, it was the duty of the Commission to enforce the terms of its order by requesting appropriate court action. (R. 187, 194.) The answers further alleged that the Commission's order of January 4, 1928, granted appellee authority to issue securities only on the condition that the $4 a share received from payments to be made by depositing stockholders should be impounded by appellee instead of being set aside by the Managers. (R. 187–188, 195.)

The only evidence offered other than the documents attached to the petition was a decree of the District Court entered on January 29, 1927, confirming the sale of the properties of the old company to appellee in the foreclosure proceedings. (This decree does not appear in the present record.)

The District Court held that the Commission's order of January 4, 1928, did not apply to the $1.50 fund and that, if it did so apply, it was invalid; it held that the Commission might require that reorganization expenses payable out of the stockholders' cash assessment other than the $1.50 fund be subjected, before payment, to the scrutiny and

supervision of the Commission or the court; and it denied the motion to dismiss. (R. 196–204.) It entered a final decree in accordance with this opinion. (R. 204.) From this decree only the United States and the Commission appealed.

SPECIFICATION OF ERRORS TO BE URGED

The District Court erred:

(1) In setting aside, suspending and annulling, and enjoining enforcement of that part of the proviso to the Commission's order relating to the $1.50 fund (termed the "trust fund" in the opinion and decree of the District Court).

(2) In holding, with respect to the proviso requiring appellee to impound the money received from the payment by stockholders in an amount equal to $4 a share, "that the true intent of the proviso is to require to be impounded only such part of the $4.00 as remained after deducting therefrom the trust fund which was not to be received."

(3) In holding that it was beyond the Commission's authority to attach, as a condition to the authority granted appellee to issue securities, the requirement of the proviso relating to the $1.50 fund.

(4) In overruling and denying defendants' motion that the petition be dismissed for lack of jurisdiction in the court to entertain a petition for the setting aside, separately from the Commission's grant of authority to issue securities, of the proviso prescribing, as "express conditions" to the author-

ity granted, parts of the terms and considerations upon and for which the Commission authorized the securities to be issued.

(5) In not dismissing the petition.

SUMMARY OF ARGUMENT

I. The Commission as a condition to its order authorizing the issue of appellee's securities required appellee to impound "the money received from the payment" of the assessment on stockholders "in an amount to equal $4 a share" and to make payments therefrom only on order of the Commission or the court. This condition applied to the fund of $1.50 a share which was a part of said $4 a share. The Commission's report, which was made a part of its order, showed that it intended to retain jurisdiction over payment of all reorganization expenses, including those payable from the $1.50 fund. The Commission's order did not use the words, "money received," to mean money receivable as of right by appellee under the terms of the Reorganization Plan under which it proposed to issue its securities. This interpretation of the order is inconsistent with the construction placed upon it by the District Court in the instant case. The words, "money received," referred to the money received by the Managers from those stockholders who should pay the assessment provided in the Reorganization Plan.

II. Section 20a of the Interstate Commerce Act empowers the Commission, after investigating the purposes and uses of a proposed issue of railroad securities and their proceeds, to authorize their issue with such modifications and upon such terms and conditions as it may deem "necessary and appropriate in the premises." This section permitted the Commission to approve the issue of appellee's securities upon the condition that appellee impound a part of the assessment on the stockholders and pay reorganization expenses therefrom only on order of the Commission or court. The Commission's order retaining jurisdiction over the payment of such of these expenses as were payable out of the $1.50 fund was justified because the terms upon which appellee was issuing its securities entitled it to receive the balance of this fund if it was not returned to the depositing stockholders.

But even if appellee's contingent interest in the $1.50 fund was not in itself sufficient to support the jurisdiction of the Commission over it, the reorganization expenses payable therefrom constituted a refinancing charge within the Commission's regulatory powers over new security issues. One of the purposes of the Interstate Commerce Act as amended by the Transportation Act, 1920, is to protect railroad credit. Improper or unreasonable financing charges are injurious to railroad credit and the Commission has consistently interpreted

Section 20a as permitting it to regulate financing charges. If the Commission in this case could not supervise expenses payable out of the $1.50 fund, reorganization plans may be formulated so as to withdraw all reorganization expenses from the scrutiny and supervision of the Commission. It is submitted that it was within the Commission's discretion to determine that, in fostering the broad purposes of the Commerce Act as amended in 1920, it was "necessary and appropriate" to guard against the imposition of unfair refinancing charges on the stockholders participating in the reorganization.

III. The jurisdiction of the courts to set aside an order of the Commission "in part" would seem to apply to a severable part of a Commission order, but not to an express condition upon which the Commission issued its order, after the authority granted by the order has been exercised. The grounds for this distinction are those which this Court gave, among others, for holding that the courts have no jurisdiction to review a negative order of the Commission, namely, that jurisdiction to review orders of the Commission extends only to cases where the administrative judgment of the Commission has been obtained. Assuming that the Commission had no statutory authority to supervise payments from the $1.50 fund, we submit that the record does not justify this Court in holding that the Commission, if it had been advised that the considerations which led it to take jurisdiction over the $1.50 fund were beyond its power, would

have determined that the major public interest required it to authorize the issue of securities by appellee.

ARGUMENT

I

THE COMMISSION'S ORDER OF JANUARY 4, 1928, APPLIED TO THE $1.50 FUND

The District Court pointed out that under the Plan appellee was not entitled as of right to any part of the $1.50 fund and that the requirement of the Commission was that appellee impound "the money received" from the stockholders' $4 a share payment. It treated the reference to $4 a share as descriptive of the payment of which the "money received" and to be impounded was only a part, and concluded that the true intent of the Commission's proviso was to require the impounding of only such part of the $4 as remained after deducting therefrom the $1.50 fund which, under the Plan, might not be received by appellee. (R. 199–200.)

We submit that this interpretation of the order is erroneous.

The report of the Commission shows that it intended by its order to exercise jurisdiction over the payment of all reorganization expenses, including those payable out of the $1.50 fund. The report of the Commission referred to the evidence submitted to it of the amount of reorganization expenses, including "expenses to be paid out of the

$1.50 per share," and to the evidence submitted of the services rendered by the several Committees and their counsel. (R. 141.) (The fees of the Committees and their counsel were, under the Plan, payable out of the $1.50 fund. R. 40.) The report then stated that this evidence was not up to date and that the record was insufficient to enable the Commission to arrive at an opinion "as to the reasonableness of the expenses and the public interest affected thereby." (R. 141.) There followed the provisions previously quoted (p. 11, *supra*) reserving jurisdiction for taking further testimony as to "the expenses of the reorganization" and as to the nature and scope of the services performed for the "compensation" and "fees" claimed, and making the grant of authority to issue securities subject to the express condition that appellee should impound the money received from the payment of "$4 a share" by stockholders and should not pay from "such fund" any amounts unless and until authorized by due order of the court or the Commission. (R. 141.) This linking of the $1.50 fund with the statement that the issue of appellee's securities was conditioned on its impounding the money received from the $4 a share assessment clearly indicates that the order applied to the $1.50 fund.

The Commission's order of January 4, 1928, referred to the report and made it a part thereof. (R. 163.) A report of the Commission is customarily made a part of its order because, if all partic-

ulars were to be set forth in the order, it would in most cases be unreasonably long and a mere repetition of what had been explained in the report. In *American Express Co.* v. *Caldwell,* 244 U. S. 617, 626–627, this Court, in passing upon the proper construction of an order of the Interstate Commerce Commission, gave weight to statements in the Commission's accompanying report.

Since all stockholders might not pay the assessment provided in the Plan and since the Commission could require the impounding of $4 a share only to the extent that assessments were paid, the Commission limited its order to "the money received" from payment of the stockholders' assessment. The District Court, instead of giving these words their natural meaning, viewed them as applying only to money which was receivable as of right by appellee under the Plan. It is submitted that this interpretation is inconsistent with the court's holding (R. 203) that the Commission's order applied to the $4 a share assessment other than the $1.50 fund, although all of this $2.50 a share balance was not receivable as of right by appellee under the Plan. (R. 26, 65.) The opinion of the District Court expressly recognized that appellee was entitled as of right only to such part of the balance of the stockholders' uncapitalized $4 a share assessment, less the $1.50 fund, as remained after the payment of reorganization expenses. It said (R. 202):

> It was provided in the reorganization plan that all cash paid in by stockholders, other than the trust fund, should be paid to plaintiff, *first deducting, however, expenses of the receivership and foreclosure proceedings and expenses of plaintiff in the reorganization.* The $2.50 per share, *less said deductions,* thus became a part of the cash to be delivered to the plaintiff and used by it as a part of its cash requirements aggregating $70,032,548.00. (Italics ours.)

A further objection to the District Court's interpretation of the order is that it is dependent upon the view that the reference in the order to the payment of "$4 a share" is merely descriptive. There appears to be but slight justification for so regarding it. The Plan did not separately designate any $4 fund or any $4 a share assessment. It provided that common stockholders should pay $32 a share and preferred stockholders $28 a share and should receive, respectively, $28 principal amount in new bonds and a share of new common stock and $24 principal amount in new bonds and a share of new preferred stock. It specified the total amount of the assessment on the stockholders and the part thereof to be capitalized in new bonds and stated that all reorganization expenses would be paid out of the uncapitalized difference. (Subdiv. (e) and (g), Par. IV of Introductory Statement, R. 33.) It was the Commission itself which first used the expression "$4 a share" fund.

The words, therefore, can not be properly characterized as descriptive. If the Commission had not intended to exercise jurisdiction over the $1.50 fund, its order would naturally have referred to the money received from the "$2.50 a share" payment by stockholders, thereby designating the $4 a share uncapitalized assessment, less the $1.50 fund. The Commission, in retaining jurisdiction over "the money received from the payment by holders of preferred and common stock in an amount equal to $4 a share," extended its order to all of the $4 a share payment.

The District Court also expressed the opinion that the receivership court had interpreted the Commission's order as not requiring the impounding of the $1.50 fund. The basis for this conclusion is that a copy of the order of the Commission entered January 4, 1928, was attached to appellee's application to that court for an order directing the execution and delivery of deeds of sale to appellee, that the order of the Commission constituted a modification of the Reorganization Plan, and that appellee and the Managers had no right so to modify the Plan which had been approved by the court without according to all stockholders an opportunity to be heard. But since any modification of the Plan required by the Commission's order was clearly for the benefit of the stockholders, it is reasonable to assume that the receivership court (if it considered the matter at all) did not deem it

necessary to give the stockholders an opportunity to be heard on a modification of the Plan in their favor. It is therefore submitted that the District Court erred in stating that the receivership court had interpreted the Commission's order as not requiring the impounding of the $1.50 fund. There is also nothing to indicate that the question of whether the Commission's order constituted a modification of the Plan was submitted to the receivership court. Under these circumstances its action in directing the delivery of deeds of sale to appellee is entitled to very little weight.

II

THE ORDER OF THE COMMISSION AUTHORIZING THE ISSUE OF APPELLEE'S SECURITIES UPON THE CONDITION THAT APPELLEE IMPOUND THE $1.50 FUND AND PAY OUT THE SAME ONLY ON PROPER ORDER OF THE COMMISSION OR THE COURT WAS VALID

By paragraph (2) of Section 20a of the Interstate Commerce Act (41 Stat. 494) the carrier may issue securities only to the extent that the Commission after investigation "of the purposes and uses of the proposed issue and the proceeds thereof" authorizes such issue. The Commission is to make such order only if it finds that the issue is compatible with the public interest, appropriate for or consistent with the proper performance of the carrier's duty to serve the public as a common carrier, and reasonably necessary and appropriate for such purpose. By paragraph (3) the Commission is given power by its order to grant or deny the applica-

tion as made or to grant it in part or deny it in part, or to grant it with such modifications and upon such terms and conditions "as the Commission may deem necessary or appropriate in the premises," and the Commission may thereafter make such supplemental orders as it may deem necessary or appropriate.

Section 20a was one of the amendments to the Interstate Commerce Act made by the Transportation Act, 1920. The general purposes and objects of the Act of 1920 were stated by this Court in *New England Divisions Case,* 261 U. S. 184, 189, as follows:

> Transportation Act, 1920, introduced into the federal legislation a new railroad policy. *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy R. R. Co.,* 257 U. S. 563, 585. Theretofore, the effort of Congress had been directed mainly to the prevention of abuses; particularly, those arising from excessive or discriminatory rates. The 1920 Act sought to ensure, also, adequate transportation service. That such was its purpose, Congress did not leave to inference. The new purpose was expressed in unequivocal language. And to attain it, new rights, new obligations, new machinery, were created. The new provisions took a wide range. Prominent among them are those specially designed to secure a fair return on capital devoted to the transportation service. Upon the Commission, new powers were conferred and new duties were imposed.

> The credit of the carriers, as a whole, had been seriously impaired. To preserve for the nation substantially the whole transportation system was deemed important.

The 1920 amendments to the Commerce Act give recognition to the many factors involved in maintaining an efficient, economical transportation system. Important among these is railroad credit, that is, the ability to finance on favorable terms. It seems proper, therefore, that the Commission, in exercising the broad powers conferred by Section 20a, be concerned that carriers receive the largest possible portion of each dollar contributed by the investing public. Under Section 20a the duty of the Commission may not be fully accomplished when it has found that the general purpose of a proposed security issue is in the public interest and that it would not weaken the carrier's financial structure. We submit that the Commission may also inquire whether the proposed plan of financing is calculated to keep financing charges as low as possible. Thus the Commission has required competitive public bidding for equipment trust certificates, a policy which appears to have brought about a marked reduction in the average spread between the sales price to bankers and their sales price to the public. *Chicago, St. P., M. & O. Ry. Co. Equipment Trust,* 145 I. C. C. 444, 446. Likewise the Commission has, as in this case, prohibited the payment of underwriting commissions. *Stock of N. Y., N. H. & H. R. R.,* 131 I. C. C. 233, 238. In *Control of Erie R.*

R. and Pere Marquette Ry., 138 I. C. C. 517, 535, it said:

> The fact that a corporation engaged in transportation has capitalizable assets in sufficient amount to support an increase in securities does not, in itself, justify such increase * * *. The necessity for the proposed issue must be demonstrated and the terms upon which it is to be sold must be found reasonable.

In the present case appellee proposed to issue certain securities for property and cash. The property was known, but the cash was subject to the payment of reorganization expenses which, except for those subject to approval by the court, might be determined by the Managers. As the case was presented to the Commission, the Managers had it in their power to determine to a material degree the amount of cash which appellee would receive in exchange for the securities that were to be issued. Under these circumstances the Commission was called upon to exercise the plenary powers given it by the Act with respect to the proceeds to be derived from the issue of railroad securities. The Commission determined that it was necessary and appropriate in the premises to reserve to itself jurisdiction over the payment of expenses which directly affected the proceeds to be derived from appellee's securities. The District Court held the Commission's orders valid in so far as applicable to the stockholders' assessment other than the $1.50

fund, but held that the Commission could not protect appellee's contingent interest in whatever remained of the $1.50 fund after deducting the charges payable therefrom. The Government submits that it was not beyond the limits of the Commission's discretion to protect appellee's interest in this fund by subjecting fees and expenses chargeable against it to its own scrutiny and supervision.

But even if appellee's contingent interest in the balance of the $1.50 fund would not be in itself a sufficient basis for the exercise of jurisdiction by the Commission over payments made from this fund, the public interest in preventing unnecessary or improper financing charges justifies the Commission's orders reserving to itself jurisdiction over payments from the $1.50 fund. The Reorganization Plan was a method of refinancing. The reorganization expenses represented the cost of this refinancing. The Plan presented to the stockholders of the old company required them, if they desired to participate, to pay a certain amount per share of common and per share of preferred stock, and they were to receive in exchange certain of appellee's securities. The difference between the net cash payment by the stockholders, taking into account any part of their original payment later returned, and the net amount received by appellee from the total stockholders' payment, after deducting reorganization expenses payable therefrom, represented the cost of the refinancing. This cost

remained the same whether the balance of the $1.50 fund went back to the stockholders or into appellee's treasury. If railroad credit is to be fully protected, the investor in railroad securities should be assured against unreasonable reorganization charges. These charges are equally imposed on the investor whether they are borne by the new company or are paid out of funds which the investor is required to contribute.

If reorganization expenses are properly looked upon as a refinancing charge, was the Commision in this case *pro tanto* deprived of its power to regulate such charge because of the provisions of prior agreements as to the disposition of the $1.50 fund? This may be tested by considering what would be the Commission's authority with respect to an analagous underwriting charge. It would scarcely be contended that, although the Commission could regulate an underwriting charge when payable directly by the carrier, it could not regulate such charge if the carrier had agreed that the subscription price paid by the public for the carriers' securities should go first to the bankers and that they should deduct therefrom their underwriting charge before paying the balance to the carrier. And the need for regulation would be all the more patent if the underwriting charge, instead of being fixed, was to be an amount determined in the discretion of the bankers. It is also submitted that the situation would not be changed if the agreement pro-

vided that part of the money received from the sale of the new securities should be allocated to the payment of the underwriting charge, and that any balance of the allocated sum remaining after payment of the underwriting charge could at the election of the bankers either be returned to the purchasers of the securities or be paid to the issuing carrier.

In the last case supposed, as in all the other cases, the underwriting charge represents the spread between the investor's dollar and the amount received therefrom by the carrier. The greater the spread, the less favorably can the carrier finance. The chief differences between underwriting charges and costs of refinancing in a reorganization are that the latter, although less frequent, are more burdensome and less within the investor's control.

It seems not unlikely that the provisions relating to the $1.50 fund were inserted in the Plan for the very purpose of escaping the Commission's control over the items payable therefrom. If this device can withdraw some of the reorganization expenses from supervision by the public authorities, it can be used to withdraw from such supervision all except those which are subject to court approval. It is not unreasonable to suppose that railroad credit will be strengthened if investors may look to the Interstate Commerce Commission to guard against unreasonable or improper reorganization charges if a railroad goes into receivership.

In the first place, the Commission's action must be viewed from the standpoint not only of the protection given to the stockholders concerned in this particular reorganization, but from the standpoint of a policy generally applicable to reorganizations. In the second place, upon a realistic view of the facts of this case there is no presumption that the stockholders willingly ceded to the Managers unlimited discretion over reorganization expenses. The stockholders were confronted with a Plan which they had to accept or lose their status as stockholders. Under the Reorganization Agreement those who did not become parties "within the periods limited or fixed therefor" could thereafter become parties and share in the benefits of the Plan only upon obtaining an express written consent of the Managers, and the latter were empowered "in their absolute discretion" and "upon such general or special terms and conditions as they may see fit, to withhold or give such consent." (R. 66.) The Circuit Court of Appeals, in affirming the decision of the District Court confirming the sale, finally modified the decree so as to provide that any time limit for the deposit of bonds under the Plan should be approved by the District Court. *Jameson* v. *Guaranty Trust Co.*, 20 F. (2d) 808, 814.

The weight to be given to the approval of the Plan by the original Committees may be judged from the fact that these committees were organized, prior to the receivership, by the bankers who as Managers later formulated the Plan. *Chicago,*

Milwaukee & St. Paul Investigation, 131 I. C. C. 615, 667. The Commission in its unanimous report in that case said (pp. 667–668):

> For months prior to the receivership they [the railroad's directors] were impotent. It was an ideal situation for the bankers to control. This they promptly did, arranged all the details, framed up the committees favorably to themselves, put themselves on the bondholders' protective committee and constituted themselves reorganization managers.

The Commission's report in the above case, issued the same day as its report and order on the reorganization here under consideration, suggests cogent reasons why the public interest might require scrutiny of the expenses and fees which under the Plan the Managers might determine. The Commission stated that these banking houses had taken a banker's profit of over 5% in retiring certain of the old company's bonds when 2% "would have been generous" and that the risk which the bankers stressed in justification of the large profits which they realized was largely nonexistent. *Chicago, Milwaukee & St. Paul Investigation, supra,* pp. 630–631. It said (p. 631):

> The transaction in view of all the circumstances is obviously inconsistent with any theory of the relationship which is supposed to exist between a railroad and its regular bankers. * * * The transaction is de-

> fended on the ground that in it Kuhn, Loeb & Company were not acting as the bankers for the St. Paul. That is exactly the point. They had acted as bankers for the St. Paul as far back as 1880; since 1909 they and the National City Bank had exclusively handled vast sums for the St. Paul; and yet at this opportunity to render to the St. Paul an important banking service the banker-railroad relation was suspended and profits greater than regular banking compensation were received.

Certain parts of the opinion of the District Court seem to suggest that it considered that the Commission exhausted its statutory power in this case when it found that appellee would receive an unmortgaged equity sufficient to support the proposed issue of common stock and when it determined that, although appellee's proposed financial structure was far from satisfactory, the major public interest required approval of the reorganization in its general outline. But that court's holding that the Commission's order was valid as applied to the part of the stockholders' assessment not represented by the $1.50 fund, shows that it conceived that this was not the full extent of the Commission's power under Section 20a. Certainly the narrower view of the Commission's authority is contrary to the practice of the Commission in exercising control over financing terms without regard to the fact that the carrier's assets may be sufficient to support the proposed security issue (pp. 27–28, *supra*).

Appellee contended in the District Court that the Commission's order was invalid because it attempted to nullify the contract rights of those who were not parties to the proceeding. But all of the agreements out of which the alleged contract rights arose were subject to the Commission's approval of the issue of appellee's securities. The Commission by its order did not remake, or attempt to remake, any contracts. It said that appellee could issue its securities only if it received as consideration therefor, in addition to the property and cash which it was to receive under the Plan, custody of the full amount of the assessment on the stockholders. If this order was valid, appellee could legally offer its securities only on these terms. The Managers or security holders, if they had considered the Commission's order a vital modification in the Plan, might have refused to accept the securities. When they accepted the securities issued pursuant to the Commission's order they must be deemed to have waived any inconsistent provisions of the prior agreements.

Appellee also attacked the Commission's order in the District Court on the ground that it in effect took away the right to a judicial determination of claims for services rendered in the reorganization. It is submitted that the order had no such effect and that, reasonably construed, it prevents only *voluntary* payment of reorganization expenses in excess of amounts approved by the Commission

or court. Any claimant dissatisfied with the decision of the Commission still has his day in court and he has the same legal remedies that he would have had if the Commission had not taken jurisdiction over payment of reorganization expenses. If a judgment is recovered against the Managers for any liability not covered by the $1.50 fund, they are protected by the indemnity provisions of the contract of April 11, 1927. (R. 99.) If a judgment is recovered against the Managers for a liability covered by the $1.50 fund, their right to charge the $1.50 fund with this judgment seems clear. The Commission's order did not purport to transfer ownership in the fund, but merely its custody. The order, in stating the terms upon which appellee might pay reorganization expenses, including those which under the Plan were chargeable against the $1.50 fund, recognized that the $1.50 fund was still charged with payment of the same items which were chargeable against it under the Plan. The Commission's order merely provided that, except on a valid judgment, such items should not be paid until approved by the Commission or the court. In any event the order should not be set aside on a construction which the Commission has not asserted and which might render its validity doubtful. The courts will reject an interpretation of a statute or written instrument which will destroy it where another interpretation not having that effect is possible. *United States* v. *Delaware & Hudson Co.*, 213 U. S. 366, 407–408; *Hobbs* v. *McLean*, 117 U. S. 567, 576.

III

THE COURTS HAVE NO JURISDICTION OF A SUIT BROUGHT TO SET ASIDE A CONDITION ATTACHED TO AN ORDER OF THE COMMISSION AFTER THE AUTHORITY GRANTED BY THE ORDER HAS BEEN EXERCISED

The Commerce Court Act (c. 309, 36 Stat. 539) conferred upon the Commerce Court jurisdiction over "cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission." The Urgent Deficiencies Act (c. 32, 38 Stat. 219) transferred the jurisdiction of the Commerce Court to the several District Courts of the United States.

The Government submits that the authority to enjoin a Commission order "in part" applies to a severable part of an order but not to a condition upon which an order was issued after the carrier has exercised the authority granted by the order. If the condition is attacked *in limine,* then the courts might have jurisdiction because, if the condition is found void, the case may be remitted to the Commission for further proceedings. But if the courts set aside a condition to an order of the Commission after the authority granted has been exercised, they thereby substitute their judgment for that of the Commission upon an administrative question the determination of which Congress vested in the Commission. *Procter & Gamble* v. *United States,* 225 U. S. 282, held that the courts have no jurisdiction to set aside a negative order of the Commission on the ground, among other

grounds, that the legislative history of the Interstate Commerce Act showed that Congress intended the Commission to act before the courts took jurisdiction.

If the courts set aside a condition attached to an order of the Commission, leaving the order outstanding without the condition, the courts are deciding a different administrative question from the one passed upon by the Commission. The results which the Commission sought to accomplish by its condition might have been considered so essential or the balance of the public interest in favor of an affirmative order might have been deemed so slight that the Commission, if it had been advised that the condition was beyond its powers, would not have issued any order or would have issued a different kind of order. The question presented with those considerations represented by the Commission's condition eliminated is not the same as the question presented with these considerations factors in the decision.

In the present case the Commission's report shows that it was far from satisfied with the terms of the proposed reorganization and that, after weighing the conflicting public interests, it granted its approval reluctantly. (*Supra,* p. 10.) Four commissioners believed that appellee's application should be denied. (R. 143, 155.) The Commission evidently considered that the conditions attached to its order would rectify in the public interest

certain features of the proposed plan for the issue of appellee's securities. The record falls short of showing that the Commission would have authorized such issue if it had known that its approval would involve leaving in the Managers full freedom with respect to the $1.50 fund. It is submitted that without such a showing this Court and the District Court have no jurisdiction and the defendants' motion to dismiss should be sustained.

CONCLUSION

It is respectfully submitted that the decree of the District Court should be reversed with directions to dismiss the petition either on the merits or for want of jurisdiction.

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APR 19 1

No. E. 10

IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

UNITED STATES OF AMERICA AND
INTERSTATE COMMERCE COMMISSION,
Appellants,

vs.

CHICAGO, MILWAUKEE, ST. PAUL AND
PACIFIC RAILROAD COMPANY,
Respondent.

Appeal from the District Court of the United States for the Northern District of Illinois.

BRIEF FOR RESPONDENT.

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No. 395.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,
Appellants,

vs.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,
Respondent.

Appeal from the District Court of the United States for the Northern District of Illinois.

BRIEF FOR RESPONDENT.

Statement.

Respondent brought this suit to enjoin the enforcement (as interpreted by the Commission) of a condition inserted by the Commission in an order authorizing the issuance of securities by respondent (hereinafter sometimes called the New Company) for the object of acquiring the properties of Chicago, Milwaukee & St. Paul Railway Company (hereinafter called the Old Company) which had theretofore been sold at foreclosure sale under a plan of reorganization. All material allegations of the

petition were admitted by the answers, and the case tried below on bill and answer, and a decree entered enjoining the condition complained of.

1. Appointment of Committees and Reorganization Managers and formulation and adoption of Reorganization Plan.

The properties of the Old Company were placed in receivership in the District Court for the Northern District of Illinois on March 18, 1925 (R. 1-2). That Court, in its administration of the Receivership, is hereinafter referred to as the Receivership Court.

Protective Committees were formed by certain of the preferred stockholders, common stockholders and bondholders of the Old Company. At their request, Kuhn, Loeb & Co. and The National City Company (hereinafter called the Managers) prepared and submitted a Plan of Reorganization (hereinafter called the Plan), which was approved by the Committees, and Kuhn, Loeb & Co. and The National City Company were designated as Reorganization Managers (R. 2-3). The Plan was a contract between the Committees, the Managers and the depositing security holders, to which neither the Old Company nor the New Company was at any time a party.

As authorized by the Plan, the Managers designated and employed numerous banks and trust companies at many places in the United States and Europe to act as depositaries under the Plan, to receive the securities deposited; and, as authorized by the Plan, the Managers and the Committees employed counsel and incurred expenses in the performance of the duties imposed upon

them by the Plan (R. 3, 4-5). The Committees, the Managers, their respective counsel, and the depositaries and sub-depositaries, acted at all times as agents of the depositing security holders.

The problems presented by the reorganization of the Old Company were complicated and various, and in addition to incurring counsel fees and expenses in connection with the formulation of the Plan and the protection of the interests of the security holders, the Managers and the Committees became involved in protracted litigation with dissenting security holders owning a substantial amount of the securities of the Old Company (R. 5). This litigation culminated in the approval of the Plan by the Receivership Court (15 F. 2d, 434*), affirmed by Circuit Court of Appeals, *Jameson* v. *Guaranty Trust Co.* (20 F. 2d, 808), and writ of *certiorari* denied by this Court (275 U. S. 569).

2. Creation under the Plan of a special fund for the payment of the fees and expenses of the agents and representatives of the depositing security holders, at the expense of such security holders, against which fund no securities of the New Company were to be issued and in which fund the New Company had no interest.

The Plan provided that the stockholders of the Old Company might become parties to the Plan and participate in the proposed reorganization by depositing their stocks under the Plan and by paying to the Managers $28 in respect of each share of preferred stock and

*The title of the case in the District Court is *Guaranty Trust Co.* v. *Chicago, M. & St. P. Ry. Co.*

$32 in respect of each share of common stock of the Old Company held by them. Against these payments, but $24 and $28 respectively in new securities of the New Company were to be issued (R. 50-51). The stockholders' assessments thus exceeded by $4 per share the amount of the new securities to be issued against them. This excess is hereinafter sometimes referred to as the uncapitalized portion of the assessments. Out of such portion, the Plan expressly provided (R. 40) that there should be created a special fund (referred to herein and in the petition as the Trust Fund) as follows:

> "From this amount a sum equal to $1.50 per share of the existing Preferred Stock and Common Stock of the Railway Company will be set aside to provide for the compensation of the Reorganization Managers and the Committees fixed as hereinafter on page 22 provided, and the fees and disbursements of their counsel and all depositaries and sub-depositaries, any balance of said sum to be paid over to the New Company as additional working capital or, if the Reorganization Managers in their discretion shall so determine, to be returned *pro rata* to the holders of certificates of deposit for stock."

The Reorganization Agreement, of which the Plan constituted a part, further provided (R. 65):

> "All holders of certificates of deposit for Preferred Stock or Common Stock of the Railway Company severally and respectively agree, for themselves and their respective transferees and assigns, that out of the cash payments of $28 per share of Preferred Stock and $32 per share

> of Common Stock made by them $1.50 per share may be used by the Reorganization Managers in their absolute and uncontrolled discretion, whether before or after the Plan has been abandoned, to pay the fees and disbursements of the counsel of the Reorganization Managers and the Committees and the fees and disbursements of all depositaries and sub-depositaries and, if the Plan shall not be abandoned, to pay the compensation of the Reorganization Managers and the Committees."

The compensation to be paid to the Managers by the depositing security holders was fixed by agreement in the Plan itself, and the Managers, as agents of the depositing security holders, were authorized to fix the compensation of the Committees, depositaries, sub-depositaries and counsel (R. 56).

The total cash requirements of the reorganization, including the creation of the Trust Fund, were stated in the Plan to be $70,032,548, all of which was to be raised from the stockholders' assessments. The amount attributable to the capitalized portion of these assessments was to be used largely for discharging the Old Company's debt to the United States, for additions and betterments, etc. After deducting the Trust Fund, the remaining uncapitalized portion, amounting to $2.50 a share, was to be used, so far as necessary, for the payment of reorganization expenses not chargeable to the Trust Fund. These reorganization expenses included the costs of foreclosure, including court allowances, printing and engraving of securities of the New Company, the charges of its corporate trustees, transfer agents and registrars, and other expenses incident to the

consummation of the Plan, if consummated. Any balance remaining in the hands of the Managers out of the amounts received from the depositing stockholders of the Old Company (other than the Trust Fund), after the disbursements authorized for the purposes stated above, were to be paid over to the New Company (R. 39-40).

The effect, as well as one of the expressed purposes,* of the Plan was to bring about the reorganization without burdening the New Company with additional capitalization for reorganization expenses. There was, however, a marked distinction between the method employed for the accomplishment of this purpose in respect of payment for services rendered to the depositing security holders for the protection and preservation of their interests, and the method employed for the payment of other reorganization expenses attributable to the foreclosure and to the launching of the New Company. The funds for the former were to be set aside in the Trust Fund, the New Company having no interest therein; while the funds for the latter were to be accounted for to the New Company, which was to be entitled to any residue.

It will be observed from the foregoing that:

(1) The Trust Fund was created out of the moneys of the depositing security holders.

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*Among the stated purposes of the Plan as described therein (R. 33) was

"(*g*) Payment of all the expenses of the reorganization out of that part of the payments by stockholders for which new securities are not to be issued, thus accomplishing all the foregoing advantages without expense to the creditors and without burdening the System with additional capitalization for such expenses."

(2) The only payments to be made out of the Trust Fund were for services performed directly for such depositing security holders or for their agents, the Managers and the Committees.

(3) No securities of the New Company of any description were to be issued against the Trust Fund, which absorbed but a little over one-third of the uncapitalized portion of the stockholders' assessments.

(4) The New Company was to have no interest, legal or equitable, in the Trust Fund and was to be under no obligation in respect of any of the expenses that were to be paid out of the Trust Fund.

(5) Only the compensation of the Managers and Committees was contingent upon the consummation of the Plan. The Managers and Committees, becoming personally responsible for the authorized employment of depositaries, subdepositaries and counsel performing services in behalf of the depositing security holders, were authorized to resort to the Trust Fund to discharge the obligations thus incurred, whether the Plan was consummated or not.

3. Foreclosure sale, and agreement for conveyance to the New Company, which expressly reserved the Trust Fund from the property to be conveyed.

The property of the Old Company was sold at foreclosure sale to purchasers acting for the Managers, and

on January 29, 1927 the sale was confirmed (R. 7) and the Plan held valid.

On April 11, 1927 (R. 8) the Purchasers, the Managers and the New Company entered into a contract whereby the Purchasers assigned to the New Company (which had been organized on March 31, 1927) all their right, title and interest in the properties of the Old Company, and whereby the Managers agreed, among other things, to pay over to the New Company or, to account to it for, all cash received under the Reorganization Plan *except the Trust Fund* (R. 98). The New Company agreed, in turn, to issue and deliver its securities, as provided in the Plan, to the Managers, and to assume all obligations incurred by the Managers, *other than those to be discharged out of the Trust Fund* (R. 99). These obligations, incurred under the authority of the Plan, remained the obligations of the Managers and Committees for which they were subject to personal suit and for the discharge of which they were entitled under the Plan to resort to the Trust Fund.

Thus the above-mentioned purpose of the Plan respecting the Trust Fund and the expenses payable therefrom was accomplished: the Trust Fund was expressly excepted from the moneys to be paid to the New Company, and the expenses payable out of the Trust Fund were expressly excepted from the obligations assumed by the New Company.

4. Proceedings before the Commission and the action taken thereunder.

On April 11, 1927 (R. 8-9, 101) the New Company applied to the Commission for:

(1) A certificate of public convenience and necessity under paragraphs 18-21 of Section 1 of the Interstate Commerce Act for the acquisition and operation by it of the lines of the Old Company;

(2) An order under paragraph 2 of Section 5 of the Act for the acquisition of control by purchase of stock or by lease of certain railroad properties controlled by the Old Company; and

(3) An order under Section 20a of the Act, authorizing and approving the issue of its securities as provided in the Reorganization Plan.

On January 4, 1928 (R. 9) the Commission issued its report, certificate and order (R. 117-165). In its report the Commission found (1) that the public convenience and necessity required the operation by the New Company of the lines of the Old Company; (2) that the acquisition by the New Company of control of the subsidiary properties was in the public interest; (3) that the railway properties and cash to be received by the New Company under the Plan, *and which excluded the Trust Fund,* constituted an adequate consideration for the securities to be issued. By its order it (*a*) authorized unconditionally the acquisition, operation and control of the properties of the Old Company and its subsidiary companies as prayed, and (*b*) authorized the New Company to issue its securities, in the amounts and in accordance with the terms set forth in the Plan, for the purpose of acquiring such properties, but upon the following conditions (R. 164):

> "*Provided, however,* and the authority herein is granted upon the express conditions, that the applicant (*a*) shall not pay any underwriting fees in connection with the proposed issue of securities; and (*b*) shall impound in a separate fund the money *received* from the payment by holders of preferred and common stock in an amount equal to $4 a share, which shall not be paid out unless and until so authorized by order of the court in respect to payments subject to the court's jurisdiction or by this commission."

On January 12, 1928 (the order having been made on January 4) respondent, in accordance with the aforesaid agreement of April 11, 1927, issued the securities authorized, and delivered them to the Reorganization Managers, in consideration of the transfer to it of the properties of the Old Company and in consideration of the obligation of the Managers to pay to the New Company, or to apply to the expenses of the reorganization, *other than those to be paid out of the Trust Fund,* the cash to be received by the Managers, *other than the Trust Fund.* In carrying out its part of said agreement, the Managers applied the deposited bonds in payment to the Receivership Court for the properties of the Old Company, thereby surrendering the lien on such bonds which the Plan gave them to protect them against obligations incurred through the employment of counsel, depositaries and sub-depositaries (R. 9-10).

At the time of the issuance of the new securities, the Managers did not pay over to the New Company any part of the stockholders' assessments, as such assessments had not then been received, but had been called for pay-

ment on February 16, 1928, with the option of paying one-half on that date and the balance on or before June 1, 1928 (R. 165-166). It was not contemplated that such payments should be received or accounted for to the New Company prior to the transfer of the properties to the New Company and the issuance of its securities. The Managers have since paid over to the New Company, or accounted to it for, all such payments other than the Trust Fund, and have, from time to time, distributed the securities of the New Company to the depositing security holders, in accordance with the Plan (R. 10).

On March 13, 1928, the Commission issued a supplemental order (R. 170), on application of the New Company (R. 165), authorizing it to make certain payments out of that part of the uncapitalized portion of the assessments which it had received, and directing it to file monthly reports showing the amounts used or expended under authority of such order (R. 171). Pursuant thereto, respondent from time to time filed reports showing such expenditures (R. 171, 173, 175, 176, 177, 178). As stated in appellants' brief (p. 13) none of these reports included any item which, under the Plan, was payable out of the Trust Fund; nor did the order of March 13, 1928, or the application upon which it was issued.

On May 22, 1928, the New Company filed with the Commission a second supplemental application (R. 11-12), asking authority to pay certain additional expenses, not payable out of the Trust Fund, to wit, the charges of the corporate trustees and the transfer agent and registrar of the New Company for services performed by them in the authentication and registration of the New Company's securities (R. 180-181).

5. Proceedings in the court below.

The petition, after stating the foregoing and other facts, alleged that representatives of the Commission had stated to the petitioner that such authority to pay the charges of the trustees, transfer agent and registrar would not be granted, and that no further authority would be granted to pay any reorganization expenses, unless and until the petitioner obtained the entire Trust Fund from the Managers and impounded the same in a separate fund to be paid out only when, and in such amounts as, the Commission should authorize; that the petitioner was advised and believed that the defendants (but erroneously) so interpreted the order of the Commission and threatened to enforce the order so interpreted by the institution of civil or criminal proceedings; that so interpreted, the order was void and beyond the power of the Commission to make; and that the Commission was further without power or authority to prohibit payment of the charges of the trustees, transfer agent and registrar or to require the submission to the Commission, for determination, of the charges for any services rendered in connection with the reorganization; and petitioner prayed that the order of the Commission, so far as it purported to impose such requirements, should be set aside and perpetually enjoined (R. 12-16).

The Commission in its answer denied the authority of any of its representatives to speak for it, but in effect admitted that the Commission and the United States interpreted, and expected to enforce, the order as requiring the petitioner to obtain and impound the Trust Fund, as alleged in the petition (R. 187). That such is the posi-

tion of the appellants is conclusively established by the brief filed in this Court as well as by their position in the court below. Appellants also moved to dismiss upon the ground that the condition was an inseparable part of the order and could not be separately enjoined or set aside.

6. Decision of the court below.

The court below overruled the motion to dismiss, and in its opinion (R. 196) held:

> (1) That the order, properly interpreted, did not require the respondent to obtain and impound the Trust Fund, but only to impound the moneys which it received and was entitled to receive under the Plan.
>
> (2) That, as interpreted by the Commission, so much of the order as required respondent to obtain and impound the Trust Fund was void and beyond the authority of the Commission to make, and should be enjoined.
>
> (3) That, however, it was within the power of the Commission to require the submission to it for its approval of all reorganization expenses and charges payable out of moneys in respect of which the respondent was entitled to an accounting, *i.e.*, all expenses and charges other than those to be paid out of the Trust Fund.

The court entered a final decree (R. 204) in accordance with this opinion.

From this decree only the United States and the Commission appealed. Therefore the holding of the court below set forth in paragraph (3) *supra,* as to the right of the Commission to subject to its jurisdiction reorganization expenses other than those payable out of the Trust Fund, is not before the Court on this appeal.

Questions Presented.

1. Does the order require respondent not only *to impound* the moneys attributable to the uncapitalized portion of the assessments against the stockholders of the Old Company which respondent actually received, or for which it was entitled to an accounting, but also *to obtain and impound* the Trust Fund, which it is not entitled to receive and in which it has no interest, legal or equitable?

2. If so, may the Commission, under the guise of a condition imposed upon an authorization of securities, draw to itself a jurisdiction (not expressly conferred), (*a*) to revise or abrogate the contract by which the depositing security holders of the Old Company provided for payment of compensation for services rendered to themselves in the reorganization of the Old Company, out of a fund specifically created by them for that purpose, in which the New Company has no interest, legal or equitable, and against which none of its securities were to be or have been issued, and (*b*) to regulate the compensation and to pass upon the expenses of persons performing such services?

3. If the Commission had no such power, did the court below have jurisdiction under the Urgent Deficien-

cies Act (which confers jurisdiction over all suits "to enjoin, set aside, annul or suspend *in whole or in part* any order of the Interstate Commerce Commission") to enjoin or set aside the condition imposed insofar as the same purports to require the respondent to obtain and impound the Trust Fund?

Perhaps the first of these questions should logically be discussed first; but, as one of the grounds for construing the order as the court below construed it is that the Commission's construction renders it invalid, the validity of the order, as so construed, is dealt with first in the argument which follows.

Statute Involved.

The power asserted by the Commission in this case was sought to be exercised under Section 20a of the Interstate Commerce Act (U. S. C. Title 49, Sec. 20a), the applicable provisions of which are as follows:

> "(2) * * * It shall be unlawful for any carrier to issue any share of capital stock or any bond or other evidence of interest in or indebtedness of the carrier (hereinafter in this section collectively termed "securities") or to assume any obligation or liability as lessor, lessee, guarantor, indorser, surety, or otherwise, in respect of the securities of any other person, natural or artificial, even though permitted by the authority creating the carrier corporation, unless and until, and then only to the extent that, upon application by the carrier, and after investigation by the commission of the purposes and uses of the proposed issues and the proceeds thereof, or of the proposed assump-

tion of obligation or liability in respect of the securities of any other person, natural or artificial, the commission by order authorizes such issue or assumption. The commission shall make such order only if it finds that such issue or assumption: (a) is for some lawful object within its corporate purposes, and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the carrier of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose.

"(3) * * * The commission shall have power by its order to grant or deny the application as made, or to grant it in part and deny it in part, or to grant it with such modifications and upon such terms and conditions as the commission may deem necessary or appropriate in the premises, and may from time to time, for good cause shown, make such supplemental orders in the premises as it may deem necessary or appropriate, and may by any such supplemental order modify the provisions of any previous order as to the particular purposes, uses, and extent to which, or the conditions under which, any securities so theretofore authorized or the proceeds thereof may be applied, subject always to the requirements of the foregoing paragraph (2)."

ARGUMENT.

I.

THE CONDITION IMPOSED, IF CONSTRUED SO AS TO REQUIRE PETITIONER TO OBTAIN AND IMPOUND THE TRUST FUND, TO BE PAID OUT ONLY AS AUTHORIZED BY THE COMMISSION, IS VOID.

1. The necessary effect of the condition, so construed, was to revise, or to abrogate, a contract between holders of securities of a carrier for the payment of compensation for services rendered to themselves, which were not to be paid for by the carrier, and in respect of which the carrier issued no securities, and to subject to the Commission's determination the fees and expenses of the persons rendering such services. Such an interference with the right of private contract is not within the Commission's powers.

The Reorganization Plan was a contract between depositing security holders, the Managers and the Committees, to which neither the Old Company nor the New Company was a party. Neither the parties to the contract nor its subject matter were within the jurisdiction of the Commission. The Managers were authorized by the Plan to employ sub-agents, to-wit, depositaries and sub-depositaries, and the Managers and Committees were authorized to employ counsel and incur expenses for the benefit of the security holders. None of the persons performing such services are subject to the jurisdiction of the Commission. For the services

performed by them they were entitled to be paid. Consequently the Plan provided that out of the payments to be made by the depositing stockholders to the Managers, an amount equivalent to $1.50 a share should be set aside as a special fund to be devoted to paying the compensation and expenses of the persons named. The balance, if any, the Managers were authorized in their discretion either to pay over to the New Company or to return *pro rata* to the depositing stockholders. No securities of the New Company were to be issued against this fund. The New Company acquired no interest in it and assumed no obligation for any of the charges payable out of it.

The contract thus made was an ordinary business arrangement by which certain private persons were to perform services for certain other private persons and were to be paid for such services. The Managers' compensation was fixed by the contract itself, as the parties had a right to fix it. The depositing security holders also delegated to the Managers, as their agents, the right to agree upon the compensation of the other persons performing services for them under the contract. This the parties likewise had the undoubted right to do. The moneys out of which such payments were to be made remained at all times the moneys of the depositing stockholders, and were to be disposed of by their agents, the Managers, in accordance with the Plan. At their option, the Managers were permitted either to return such moneys to the depositors or to pay it over to the New Company as additional working capital. Until this election was made, the fund remained the private property of those who had contributed to it. Those provisions of

the contract relating to the creation and use of the Trust Fund related to private rights and obligations only. No public interest was involved.

The necessary effect of the condition imposed, as interpreted by the Commission, is to override, abrogate or revise this contract, notwithstanding that none of the parties concerned are carriers and none of the services affected were rendered to any carrier. For payments to be made in accordance with the contract, it substitutes payments to be made only on order of the Commission. It has the effect of annulling the contract with the Managers for a fixed compensation for their services to the depositing security holders, and of limiting them to such compensation as the Commission may fix. It interferes with the right of contract by preventing those persons whose compensation was not fixed in the Plan from agreeing with the Managers thereon. Instead, they are limited to such compensation as the Commission may fix. It likewise deprives each of such persons of their right, failing such agreement, to recover the reasonable value of their services as determined by a jury, and substitutes for such determination the determination of the Commission.

By this means, the Commission seeks to create for itself a jurisdiction to regulate the fees and expenses of private persons, not subject to its jurisdiction, performing services for other persons likewise not subject to its jurisdiction. As hereinafter pointed out, no power so to override, abrogate or revise contracts, or to deprive private persons of their legal remedies, has been expressly conferred upon the Commission. If so conferred, it would be, to say the least, of doubtful constitutionality.

In order to avoid the inevitable consequences of the order so construed, it is said in appellants' brief (pp. 35-36) that the only effect of the order is to transfer the custody of the fund from the Managers to the New Company; that it prohibits only *voluntary* payment in excess of amounts approved by the Commission; and that "any claimant dissatisfied with the decision of the Commission still has his day in court and he has the same legal remedies that he would have had if the Commission had not taken jurisdiction over payment of reorganization expenses." This argument appears to be entirely inconsistent with the argument previously made in the brief, as to the necessity for the exercise of the asserted power of the Commission in order that it may regulate and limit expenses in reorganizations. For, unless the Commission has the power of *determination*, the order is wholly ineffectual to achieve its stated purpose.

However, under the limitation now suggested the order is equally void, since it still has the effect of overriding the contracts of persons not subject to the jurisdiction of the Commission, relating to their own private affairs, and seeks to compel suits between private parties respecting compensation for services performed by one for the other, and in respect of which they are themselves in agreement.

The contract, furthermore, provides that the Trust Fund shall remain in the custody of the Managers; and even under the suggested limitation, the order of the Commission annuls that provision of the contract and transfers the fund to the custody of the New Company.

Again, under the contract, the moneys deposited remained the property of the depositing stockholders, until paid out in discharge of the obligations created by the contract and until the Managers have exercised their election either to pay the balance over to the New Company or to return it *pro rata* to the depositing stockholders; but the order, as now interpreted, destroys both the existing property right of the depositing stockholders and their right to receive such balance, if the Managers elect to return it to them.

It is not clear from the appellants' brief what effect the order, as now interpreted, has upon the contract compensation of the Managers, *i. e.*, whether they are still entitled to the contract compensation, even though in excess of that determined by the Commission, or whether they are limited to the latter. In either event the order is clearly bad. If they are entitled only to the latter, the result is to set aside a valid and enforcible contract. If they are entitled to the former, although in excess of the latter, they are required first to submit their compensation to the Commission for review, and this, in addition to rendering the order both ineffectual and absurd, postpones payment to the loss and detriment of the Managers and requires them to incur such expense as may be involved in undertaking to justify their contract compensation before a tribunal to which, under this latest interpretation of the order, it is a matter of no ultimate concern.

So far as concerns those persons whose compensation is not fixed by the Plan, the order deprives them of the right to agree with the Managers upon the amount of

their compensation and to receive in payment the amount so agreed upon. They are thus deprived of their right of private contract and required instead to submit their compensation first to the determination of the Commission. Then, if they are dissatisfied, they may sue, thus becoming involved in the expense of litigation, in addition to the consumption of such time and money as may be required in the proceedings to be had before the Commission.

We are not told what legal effect, if any, the Commission's determination would have in any subsequent suit, under the construction of the order now taken by the appellants. It will hardly be contended that it would constitute *prima facie* evidence of the reasonable value of the services performed, and it would appear to be of no evidentiary value whatsoever. Under the construction now suggested, the order of the Commission becomes a mere idle gesture. This argument, in fact, is an admission that the Commission may not lawfully regulate the payments to be made to persons entitled to be paid out of the Trust Fund for services performed.

2. The power to impose conditions in respect of the issuance of securities is not unlimited. The conditions imposed must be germane to the subject matter and material to issues which the Commission has been given power to determine.

The Commission is a body of limited jurisdiction. It may not by indirection exercise powers, the express grant of which has been withheld. *Interstate Commerce*

Commission v. *Cincinnati, N. O. & T. P. Ry.*, 167 U. S. 479; *Harriman* v. *Interstate Commerce Commission*, 211 U. S. 407; *United States* v. *Louisville & Nashville R. R.*, 236 U. S. 318; *United States* v. *Pennsylvania R. R.*, 242 U. S. 208. This it may not do even in cases, such as those cited, where it is at least arguable that the exercise of the implied power asserted was essential in order effectively to carry out the powers expressly granted. Much less may the Commission by indirection exercise a power not expressly conferred and not even remotely related to the powers expressly conferred.

The power to impose conditions conferred by paragraph (2) of Section 20a is not an unlimited power. It will scarcely be contended that permission to issue securities could be conditioned upon a proviso that a certain person should be elected as President and retained so long as the securities remained outstanding, or that certain persons should be removed from the Board of Directors, or that brokerage fees on all purchases and sales of such securities on the New York Stock Exchange should, as paid, be impounded by the New Company (to which they did not belong), to be paid out to the brokers effecting such purchases and sales in such amounts as might be approved by the Commission. Yet the condition here imposed is of precisely the same character as that last described.

The condition must be germane to the subject matter and fairly within the exercise of the powers expressly delegated. Cf. *People ex rel. N. Y. C. & H. R. Co.* v. *Commission*, 227 N. Y. 248; *People ex rel. Binghamton L., H. & P. Co.* v. *Stevens*, 203 N. Y. 7. The Commis-

sion cannot, under the guise of administering this or any other section of the Act, draw to itself powers not conferred upon it by the Act. Cf. *Kuenster* v. *Meredith,* 264 Fed. 243; *School of Magnetic Healing* v. *McAnnulty,* 187 U. S. 94; *United States* v. *United Verde Copper Co.,* 196 U. S. 207; *People ex rel. N. Y., N. H. & H. R. Co.* v. *Willcox,* 200 N. Y. 423. Nor can it, by conditions attached to its approval, coerce interested carriers, and persons not subject to its jurisdiction, into consenting to a control over matters which Congress has withheld from its control. The power of regulation cannot be used to advance some general policy, however laudable, or to accomplish some purpose of the Commission, outside of the Act, when the powers conferred by Congress are not sufficient to achieve those ends. *Morrill* v. *Jones,* 106 U. S. 466; *Waite* v. *Macy,* 246 U. S. 606.

3. The condition imposed was not within the express or implied powers of the Commission.

(a) THE CONDITION IMPOSED HAD NO RELATION TO ANY ADMINISTRATIVE QUESTION COMMITTED TO THE COMMISSION FOR DETERMINATION.

The Act does not invest the Commission with arbitrary power to determine under what circumstances and upon what conditions authority to issue securities may be granted or denied. Such a grant of authority would not only be invalid as a delegation of legislative power without the prescription of a standard, and therefore invalid (see *Field* v. *Clark,* 143 U. S. 649, 692-694; *Union Bridge Co.* v. *United States,* 204 U. S. 364, 384-385;

United States v. *Grimaud,* 220 U. S. 506, 522), but it would be a delegation of power which Congress does not itself have—since Congress can subject the railroads only to such regulation as is reasonably connected with the regulation of interstate commerce. See *Dayton-Goose Creek Ry.* v. *United States,* 263 U. S. 456, 479 *et seq; Wilson* v. *New,* 243 U. S. 332, 346-347. In exercising this jurisdiction, as in exercising other powers under the Interstate Commerce Act, the Commission must apply to each case the standards created by the Act itself and reach its determination accordingly. See *Chicago Junction Case,* 264 U. S. 258, 263-266. It may not substitute for such standards other standards of its own. *Southern Pacific Co.* v. *Interstate Commerce Commission,* 219 U. S. 433. The Act provides:

> "* * * The Commission shall make such order only if it finds that such issue or assumption (a) is for some lawful object within its corporate purposes, and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the carrier of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose" (49 U. S. C. A. §20a (2)).

Paragraph (3) confers upon the Commission the power

> "to grant or deny the application as made, or to grant it in part and deny it in part, or to grant it with such modifications and upon such terms and conditions as the Commission may deem necessary

or appropriate in the premises * * *" (49 U. S. C. A. §20a (3)).

It may not be doubted that if the Commission, although making all of the findings required by paragraph (2), should deny an application for the issuance of securities without reason, or should assign as a reason therefor grounds having no relation to the standards established by paragraph (2), it could by mandamus be compelled to enter an order authorizing their issuance. *United States* v. *Schurz,* 102 U. S. 378; *Butterworth* v. *Hoe,* 112 U. S. 50; *Illinois State Dental Examiners* v. *People,* 123 Ill. 227; *Matter of Picone* v. *Commissioner of Licenses,* 241 N. Y. 157; *People ex rel. South Shore T. Co.* v. *Willcox,* 196 N. Y. 212; *State ex rel. Mauldin* v. *Matthews,* 62 S. E. 695 (S. C.). Similarly, terms and conditions, if imposed, must be for the purpose of bringing the issue within the purposes and objects expressed in paragraph (2).

Under paragraph (2) the Commission must find, first that the issue proposed by the Company "is for some lawful object within its corporate purposes, and compatible with the public interest." The object of the proposed securities in the present case was the acquisition by the New Company of the properties of the Old Company. The order of the Commission expressly certifies that the present and future public convenience and necessity require the acquisition and operation of the properties of the Old Company by the New Company, and expressly authorizes its acquisition of control of other companies previously controlled by the Old Company, as in the public interest (R. 163). The Commission thus expressly found that

"the object" for which the securities were to be issued was one "compatible with the public interest." It was, of course, within the applicant's "corporate purposes."

The Commission must next determine whether the issue proposed and its object are "necessary for, or appropriate, or consistent with the proper performance by the carrier of its service to the public as a common carrier, and will not impair its ability to perform that service." That the object of the issue, to wit, the acquisition of the lines of the Old Company, was necessary and appropriate for the proper performance by the New Company of service to the public as a common carrier, necessarily follows from the certificate that public convenience and necessity require the acquisition of the properties of the Old Company, to acquire which the securities were to be issued.

In the determination of these jurisdictional facts the Commission may also without doubt inquire into the consideration, and into such matters as the rate of interest to be paid, etc. In other words, it may guard against the improvident issuance of securities, although the object of such issue may be compatible with the public interest. Otherwise, the ability of the carrier to perform its public service might be impaired. As hereinafter appears, the Commission expressly and unconditionally found the contract consideration, which expressly excluded the Trust Fund, to be adequate to support the securities authorized. It approved the amount and classes of securities to be issued, the rates of interest to be paid, etc. Manifestly, therefore, the ability of the carrier to perform its public service would not be

impaired either by reason of the object for which the securities were to be issued, to wit, the acquisition of the properties of the Old Company, or by the issuance of the new securities necessary to accomplish such purpose. That the issuance of the securities proposed was reasonably necessary and appropriate for the purposes sought is, of course, plain. The condition imposed, therefore, had no relation whatever to the matters and the only matters committed to the determination of the Commission in granting or withholding its approval. This being so, it could not qualify either its order or its ultimate findings by the condition sought to be imposed.

If the Commission had imposed the condition that some part of the properties should not be included in those to be taken over by the New Company, on the ground that their inclusion was not compatible with the public interest, or if it had found that the rate of interest on one of the bond issues was excessive, and had imposed the condition that it should be reduced, on the ground that the higher interest rate would, in the Commission's opinion, impair the ability of the carrier to perform its public service, the condition would have been pertinent to the issues. Or, if the Commission had found the consideration for the securities to be issued inadequate by the amount of $1.50 per share, and had conditioned its order upon the receipt of an additional consideration in that amount, such a condition would have been appropriate. If it had done this, however, the interested parties would have been free to raise that sum by an additional assessment. With this done, the condition would be fully satisfied, but the Commission would be

without jurisdiction over reorganization fees and expenses, and the Trust Fund would continue to be the source from which such payments were to be made.

The condition imposed related to matters wholly outside the jurisdiction of the Commission and, having no bearing upon the jurisdictional facts found, was void and mere surplusage.

(b) THE CONDITION MAY NOT, AS SUGGESTED BY APPELLANTS, BE SUSTAINED AS A REQUIREMENT FOR THE RECEIPT OF ADDITIONAL CONSIDERATION FOR THE SECURITIES TO BE ISSUED.

In the answers (R. 187-188) and in the court below, appellants undertook to support the order as one requiring the receipt by the New Company of an additional consideration beyond that contracted for. This contention is faintly renewed in appellants' brief in this Court (p. 35). It is entirely without merit. Such was not the purpose or effect of the condition. On the contrary, the Commission itself expressly found that the contract consideration, which in terms excluded the Trust Fund, was fully adequate to support the full amount of the securities sought to be issued. In its report (R. 136) the Commission says:

> "In the instant case the testimony is that the value of the properties proposed to be acquired ranges from $640,000,000 to $900,000,000. For purposes of argument, the Jameson Committee took $700,000,000. The book value on May 31, 1927, in round numbers was $707,000,000. Against these values or this investment there

> will be outstanding after the proposed reorganization the following: Undisturbed bonds, excluding $22,129,000 of bonds assumed pursuant to the lease of Terre Haute, $160,001,960; 50-year 5 per cent. mortgage gold bonds, $106,395,096; adjustment mortgage bonds, $182,873,693; preferred stock, $119,845,800; total, $569,116,549. Using the lowest figure, $640,000,000, and deducting from that amount the total par value of the securities enumerated, or approximately $569,100,000, would leave $70,900,000 as representing the value of the 1,174,060 shares of common stock without nominal or par value. In the hypothetical balance sheet as of May 31, 1927, the applicant shows $174,342,841.64 for the book value of the common stock. Without expressing any opinion as to the value of the no par value common stock, it would appear that upon applying the test suggested *there will remain an unmortgaged equity in the properties sufficient to permit the bondholders to assign to the stockholders an interest therein and to support the issue of stock in the amounts proposed.*"

The Commission thus affirmatively found that the value of the properties of the Old Company, exclusive of the free cash which the New Company was to receive, was sufficient to support the issuance of the proposed securities having a par value, and to warrant the proposed issue of no par value common stock. That the condition was not imposed upon the theory that, without it, the consideration for the securities would be inadequate is also conclusively shown by the concurring opinion of Commissioner Hall, who said (R. 142-143):

> "I am in accord with the conclusions authorizing issuance and assumption of liability in respect of securities and granting certificate of public convenience and necessity. I do not conceive that as a commission we have anything to do with the application which may be made of the four dollars per share paid in to the reorganization managers by existing stockholders. What those stockholders do with their money is their affair unless and until some part of that money is paid over to the applicant. We are not dealing with the merits or demerits of the reorganization plan as such."

Moreover, if the consideration was inadequate it was the duty of the Commission so to find and also to find the extent of the deficit. It did neither. That the purpose of the condition was not to provide an adequate consideration, but to regulate compensation and fees payable out of the Trust Fund, is established by the foregoing excerpts from the Commission's report and from concurring opinion of Commissioner Hall.

(c) THE CONDITION MAY NOT BE SUSTAINED UPON THE OTHER GROUNDS URGED IN APPELLANTS' BRIEF.

Appellants urge that the condition should be sustained because, if the Commission could exercise the power which it sought to exercise, the result would be to keep railroad financing charges as low as possible (App. Br., p. 19), and they urge the analogy of cases in which the Commission has required competitive bidding for equipment trust certificates and has prohibited underwriting

commissions to be paid in connection with security issues (App. Br., pp. 27-28).

There is no analogy between the condition sought to be imposed by the present order and the requirement of competitive bidding for equipment trust certificates or the prohibition of underwriting commissions, which are cited by the appellant as instances of the Commission's exercise of power "to keep financing charges as low as possible." If the Commission's power to impose such requirements is to be supported, it is only as an exercise of the Commission's authority to see that the carrier receives an adequate consideration for securities which it issues. And in the present case, as stated, the Commission found the contract consideration, which expressly excluded the Trust Fund, to be adequate. The Commission may no doubt inquire into the reasonableness of commissions to be paid *by the carrier*, and into the reasonableness of any discounts to be suffered *by it* in the sale of its securities; but here the carrier paid no commissions and suffered no discounts. The Trust Fund did not constitute any part of the cost *to the carrier* of its financing; and in fact, the only cost of financing to the New Company under the Plan was the expense incidental to the printing, engraving, authentication and issue of its securities. The Trust Fund was created for the express purpose of paying, without cost to the New Company, the debts of the security holders of the Old Company, for services rendered to them in the protection and preservation of their interests, and, in largest part, rendered long before the New Company came into existence. The costs thus incurred were not the costs

of any carrier, *were not to be borne by any carrier,* and none of the securities were issued against the fund out of which these private debts were to be paid. The amount so to be paid was a matter solely between the depositing security holders and their agents and representatives who performed such services.

In apparent recognition of these facts, the order is sought to be supported (App. Br., pp. 29-30) as an exercise of a power to protect investors in railroad securities against unreasonable reorganization charges. Of course, no such power has been expressly conferred by the statute. The primary purpose of the Interstate Commerce Act is the protection of the public interest, and the primary purpose of Section 20a is to prevent carriers from weakening themselves financially by improvident issues of securities, and thereby disabling themselves from giving adequate service to the public at reasonable rates. In order to afford this protection to the public, Congress has laid down certain definite tests in Section 20a which the Commission is to apply in determining whether securities should be authorized. When the Commission has applied those tests, its power is at an end, and it has no authority to impose its own standards of public interest or to concern itself with contracts between private parties which do not in any particular affect the public interest. Of course, whenever the Commission in exercising its jurisdiction under Section 20a, prevents improvident security issues, the result is to strengthen railroad credit and protect railroad investors; but Congress has committed to the Commission no independent jurisdiction to protect railroad in-

vestors and certainly no jurisdiction to regulate their private contracts.

Moreover appellants' argument loses sight entirely of the nature of that part of the Plan which related to the Trust Fund, and of the relation between the depositing security holders, the Old Company, the New Company, the Managers and all other persons performing services for the depositors. The depositing security holders were investors whose investment had been placed in jeopardy by the receivership and by the probable foreclosure and sale of the properties of the Old Company. The persons who performed services that were to be paid for out of the Trust Fund, performed them for the protection and preservation of that investment. What they were paid for performing such services was no more the concern of the Commission than were the charges of the opposing protective committees and their counsel, who, in the protection of their supposed interest, opposed the Plan. The fact that this Plan, and not the opposition plan, was approved by the Court, as a result of which securities of the New Company were issued thereunder, has no bearing upon the nature of the indebtedness to be discharged out of the Trust Fund, or of the rights of the interested parties to make and carry out their contract without interference from the Commission. The Commission has no more authority to regulate the charges in question than it would have to regulate the charges of a firm of attorneys, engineers or bankers employed by some individual security holder of the Old Company to advise him in the situation.

Nor may the power asserted be inferred because the contract made and the services rendered relate to the re-

organization of an interstate carrier. Any such reorganization necessarily involves the incurring of expenses for the benefit and protection of the interests of the security holders. The agents chosen by them for this purpose, and the compensation to be paid to such agents for services rendered to the security holders, are not matters of public interest, or in which the Commission has any concern. It was for the parties to such reorganization to determine whether such expenses should be capitalized and ultimately borne by the New Company, or whether they should be paid by the security holders of the Old Company. What the powers of the Commission would have been, if the Plan had provided for the capitalization of such expenses, or for their assumption by the New Company, it is unnecessary to consider. As it provided that they should be borne by the participating stockholders of the Old Company out of a Trust Fund to be specially provided by them for the purpose, and in respect of which the New Company issued no securities, no power resides in the Commission to revise or abrogate the contract so made, or to pass upon the compensation to be paid for the services rendered, or upon the expenses for which the persons rendering such services were entitled to reimbursement.

If provision for paying for such services had been made in a separate contract between the security holders and the persons performing the services for them, it would hardly be contended that the Commission acquired jurisdiction to regulate the compensation for such services, merely because they were performed in connection with the reorganization of a railroad. Yet the legal effect on the rights of the parties is

precisely the same in both cases. If instead of thousands of security holders there had been ten, and the ten had entered into a contract with the Managers and others for the performance of the same services, and had agreed to pay the Managers the amount stipulated in the Plan, no one would think of contending that the Commission would have any authority to review, revise or abrogate such a contract.

Questions of the fairness of a reorganization plan, of the relative treatment accorded the different classes of security holders, or the propriety of the assessments required of the stockholders as a condition to their participation in the plan, and all other questions of private rights arising in a reorganization, are questions outside the jurisdiction of the Commission and within the established jurisdiction of the federal courts. *Northern Pacific Railway Company* v. *Boyd*, 228 U. S. 482; *St. Louis-San Francisco Ry.* v. *McElvain*, 253 Fed. 123; *St. Louis-San Francisco* v. *Wall* (D. C. E. D. Mo., Cons. Cause Eq. No. 4857, July 1, 1918); *Phipps* v. *Chicago, R. I. & P. Ry.*, 284 Fed. 945; *Chicago, R. I. & P. Ry.* v. *Lincoln H. & M. Commission Co.*, 284 Fed. 955. One of the provisions of the Plan, affecting the rights of the participants therein, was the setting aside of $1.50 per share of the assessments as a Trust Fund for the payment of expenses incurred for their benefit. Under the cases cited, any interested party might have come into the Receivership Court and raised the whole question of the propriety and fairness of this provision or any other provision of the Plan. Indeed, this question was raised by the dissenting Com-

mittee. All objections to the provisions of the Plan were heard by the Receivership Court in the exercise of its jurisdiction, and that court in its decree confirming the sale* the objections and approved the Plan. See *Jameson* v. *Guaranty Trust Co.*, 20 F. (2d) 808, 810. Objectors to the Plan appealed to the Circuit Court of Appeals, which likewise found the Plan in all respects fair, and a writ of *certiorari* was denied by this Court. The decision in that litigation, therefore, is *res adjudicata* in respect of all questions of private right arising under the Plan.

On application to the Commission for authority to issue the securities necessary to carry out the Plan, the Commission was not possessed of any authority to review the decision of the courts. Under Section 20a it is empowered to pass upon security issues, including those made pursuant to reorganization plans. But in passing upon any issue of securities, whether under a reorganization plan or not, it is limited to the performance of the

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*This decree which, as stated in appellants' brief (p. 15) was the only evidence offered in the court below, was for some reason not made a part of the printed record before this Court. It is understood that the Clerk of the District Court is forwarding such decree to the Clerk of this Court for incorporation in the record. It provided as follows:

"The provisions of the Reorganization Plan affecting the respective priorities of all persons and corporations interested in the Railway Company and its property are equitable and the Reorganization Plan contains an equitable and timely offer of participation in the reorganization thereby proposed to all persons entitled thereto, of which due and reasonable notice has been given; and all complaints as to the equity of the provisions of the Reorganization Plan made at said hearing are hereby found without merit and overruled and all persons, firms and corporations are forever barred from making hereafter any complaint in respect of the Reorganization Plan or any provision thereof."

administrative functions expressly conferred upon it, and is concerned only with matters affecting the securities to be issued and the public interest in the carrier which issues them. With reorganization plans as such, and with the private rights of the parties thereto, it has no concern; and in *Miller* v. *United States,* 277 Fed. 95, a statutory court for the Southern District of New York, composed of Judges Hough, Learned Hand and Augustus N. Hand, so held.

It is urged (App. Br. 19-20) that, because at the election of the Managers the New Company might ultimately receive any balance remaining in the Trust Fund, the condition was valid on the ground that it is appropriate for the Commission to reserve jurisdiction over the payment of expenses which directly affect the proceeds to be derived from a carrier's securities.

But this argument ignores the fact that the Trust Fund was no part of the proceeds of sale of such securities.

The New Company did not issue its securities to the security holders of the Old Company, but to the Managers; and the consideration for the issue of such securities was not the amount of the assessments paid by stockholders of the Old Company to the Managers, but consisted of (1) the properties of the Old Company and (2) so much, and only so much, of the cash raised by the stockholders' assessments as, by agreement in the Plan, was to be paid over to the New Company. The depositing stockholders paid their assessments, not to the New Company, but to the Managers; and such pay-

ments were made, not only to enable the Managers to pay for the securities of the New Company, but also to enable the Managers to make other payments, *i.e.*, of expenses incurred for the benefit of the security holders of the Old Company—expenses which had no relation to the securities of the New Company or the consideration which it was to receive for them.

The legal situation may be illustrated by a simple analogy: A employs B to purchase securities from C for $100,000, and pays B $105,000 to cover the purchase price and B's expenses and compensation. In that case, while the extra $5,000 may be part of the total cost of the securities to A, it is certainly no part of the consideration received by C on the sale, and, as to him, no part of the proceeds of the sale of his securities.

So in the present case, while it may be argued that the whole amount of the stockholders' assessments can be regarded as part of the cost to them of the securities of the New Company, it certainly may not all be regarded as part of the consideration which the New Company received for such securities. When the Managers had received the securities of the New Company, they resold or distributed such securities to the depositors. Thus there were two separate transactions, in which the considerations were not the same: (1) the issue of securities by the New Company to the Managers for the *considerations which the New Company was entitled to receive* under the Plan, and (2) the distribution or resale of these securities by the Managers to the depositing security holders, for the *considerations which such security holders were required to pay* to the Managers under the

Plan. The amounts which the stockholders paid to the Managers did not determine what the New Company was to receive for its securities. It was the agreement of the Managers, pursuant to the Plan, to pay over *part* of such assessment to the New Company, that determined the consideration which the New Company was to receive; and that agreement, as well as the Plan, expressly and in unmistakable language excluded the Trust Fund from that consideration.

The Plan might have provided merely that the $4 per share assessment would be applied by the Managers to reorganization expenses, any unexpended balance to be returned *pro rata* to the depositing security holders; and in that event no one would contend that the assessment bore any relation to the consideration for which the new securities were to be issued. Yet that is precisely what was provided in respect of the Trust Fund, except that the Managers, as agents of the depositing security holders, were given the power either to return the excess or to pay it to the New Company as additional working capital. That grant of power and the possibility that it might be exercised in favor of the New Company, did not change the consideration for which its securities were issued. If the Managers should elect to pay over the balance of the Trust Fund, if any, to the New Company, such payment would amount, in legal contemplation, to nothing more than a voluntary contribution by the stockholders to an enterprise in which they all were interested.

(d) THE EXERCISE OF IMPLIED POWERS SUCH AS THE COMMISSION HERE SOUGHT TO EXERCISE WOULD RESULT IN EXTENDING ITS JURISDICTION FAR BEYOND WHAT CONGRESS INTENDED IN THE INTERSTATE COMMERCE ACT.

It requires but a casual reading of the Act to show that the condition imposed by the present order, with respect to payments out of the Trust Fund, was not germane to any power conferred upon the Commission in connection with securities issues. Consider the extent of the implied power of the Commission to impose conditions under this and other sections of the Act, if the power asserted in this case be sustained. Under paragraph (20) of Section 1, the Commission is empowered to impose "such terms and conditions as in its judgment the public convenience and necessity may require" upon the issuance of certificates of public convenience and necessity for the construction of new lines. If, under the guise of a condition attached to the issuance of securities under Section 20a, the Commission may regulate compensation and fees of the Managers and other agents of the security holders of the Old Company, there is no reason why it may not, by conditions imposed upon certificates under paragraph (20) of Section 1, regulate the wages of labor and the prices of materials to be paid in the construction of new lines, or require such new lines to be constructed under supervision of the Commission's engineers, or prohibit the purchase of right of way until the price to be paid for the same has been approved by the Commission.

Similarly, if this condition is valid, the Commission may, under guise of a conditional order granting authority under paragraph (2) of Section 5 for the acquisition of control by one carrier of another, seek to regulate the salaries and wages of officers and employees operating such line in the future, or the prices to be paid for coal and other supplies consumed in its operation, or to require that its operation shall be conducted under the supervision of the Chief of the Commission's Bureau of Operations or some other designated representative of the Commission. If this order is valid, it may, where securities are sought to be issued under Section 20a for the purpose of making additions and betterments to existing property, for which no certificate of convenience under Section 1 is necessary, require that such improvements shall be made under the supervision of engineers in the employ of the Commission, and that the wages of labor, prices paid for materials and contracts for construction shall all be subject to the approval of such engineers or of the Commission. The Commission, of course, has no such authority. Neither has it the authority asserted here.

Furthermore, in each of the cases assumed the conditions suggested relate to contracts or other business undertakings *of a common carrier subject to the Interstate Commerce Act.* The power asserted here goes further, and involves an assertion of jurisdiction over the contracts of *non-carrier persons made with each other, and not affecting the carrier.*

An analogous case would be one in which a railroad company applied for authority to issue $100,000 of bonds

in payment for a piece of land belonging to A, in the sale of which A had employed the services of B, a broker, and had agreed to pay B a commission of five per cent. if the sale were consummated. The Commission would have authority to determine whether the purpose for which such bonds were to be issued was compatible with the public interest, and whether such issue in the amount and on the terms proposed was consistent with the proper performance of the railroad's duties as a common carrier, or would impair its ability to perform such duties. But manifestly it could not, as a condition to such issue, require the railroad company to obtain from A, or from B if it had already been paid to him, B's agreed commission of $5,000, and impound it in a separate fund, out of which the railroad company should pay to B such compensation for his services to A as the Commission might approve as fair and reasonable.

The only difference between the case assumed and the case in hand is in the relative size of the transactions and number of persons involved. The Commission has no more authority in the one case than in the other to impose a condition the effect of which is to set aside the contract providing for payment of compensation for services rendered to the vendor or vendors.

(e) APPELLANTS' REFERENCES TO THE SO-CALLED ST. PAUL INVESTIGATION CASE ARE EXTRANEOUS TO THE ISSUES HEREIN, AS WELL AS OUTSIDE OF THE RECORD.

Appellants' brief (pp. 33-34) refers to certain statements made by the Commission in *Chicago, Milwaukee & St. Paul Investigation,* 131 I. C. C. 615. The object of

one is to indicate that at some time in the past the present Managers, then acting as bankers for the Old Company, had taken a banker's profit in excess of what the Commission thought was right. The object of the other is to create the impression that the Managers controlled the entire situation, including the appointment of the Committees. The record in the case referred to is not before the Court, and without the record the parties criticized in the excerpts quoted are, of course, in no position to defend themselves against the attack made.

It may be pointed out, however, that the petition alleges that the Committees were appointed by certain of the various classes of security holders whom they represented. This allegation the defendants admitted in their answers. Moreover, as the petition alleges and the answer admits, there were, in addition to the Committees which were parties to the Plan, three other Committees with plans of their own, who invited security holders to become parties thereto, and one of these Committees opposed the Plan to the bitter end. The depositing security holders were not under the domination of the Managers or the Committees, but were free agents to deposit their securities under that plan which, in their opinion, was for their best interests.

The matters referred to are wholly extraneous to any issue before this Court. The case is here on bill and answer, and the issues raised relate solely to the powers of the Commission. It is difficult to find any reason for the injection of matters so foreign to the case at bar, unless there was a purpose to arouse prejudice and divert the attention of the Court from the matters in controversy.

II.

THE CONDITION, AS CONSTRUED BY THE COMMISSION, BEING VOID, WAS NO PART OF THE ORDER, AND RESPONDENT WAS ENTITLED TO DISREGARD IT AND ISSUE ITS SECURITIES; AND THE ENFORCEMENT OF THE ORDER MAY NOW BE ENJOINED NOTWITHSTANDING THAT RESPONDENT HAS AVAILED ITSELF OF THE VALID PART OF THE ORDER.

It is fundamental that an administrative body, or indeed a state, having power to grant or withhold a privilege, may not, by imposing a condition upon such grant, exercise an authority which it cannot exercise directly. *Western Union Telegraph Co.* v. *Kansas*, 216 U. S. 1; *Pullman Co.* v. *Kansas*, 216 U. S. 56; *Ludwig* v. *Western Union Telegraph Co.*, 216 U. S. 146; *Southern Railway Co.* v. *Green*, 216 U. S. 400; *Terral* v. *Burke Construction Co.*, 257 U. S. 529; *Fidelity & Deposit Co.* v. *Tafoya*, 270 U. S. 426; *Frost Trucking Co.* v. *Railroad Commission*, 271 U. S. 583; *Hanover Fire Insurance Co.* v. *Harding*, 272 U. S. 494.

Such a condition is void, and its enforcement will be enjoined even when the plaintiff has availed itself of the right conferred by that portion of the statute or order which is valid, and to which the condition is attached. In *Terral* v. *Burke Construction Company*, *supra*, an Arkansas statute expressly provided that if a foreign corporation, admitted under it to do business in the state, should remove a case to the federal court, the authority given would become revocable. The Burke Construction

Company applied for and obtained a license to do business in the state under this statute. Thereafter it removed a case to the federal court and, being threatened with revocation of its license, sued to enjoin the enforcement of the condition imposed. This Court held that, since the state was without power to impose the condition, the Company was entitled to enjoin its enforcement, although it had availed itself of the privilege extended by the statute in which the condition was to be found. This it held, notwithstanding the fact that the state could, if it chose, arbitrarily refuse to permit foreign corporations to do business within its borders.

In *Fidelity & Deposit Co.* v. *Tafoya, supra*, it was held that the right of an insurance company to do business within the state might not be withdrawn because it had violated a condition, imposed upon its statutory right to do business in the state, that it should not pay any fee or commission to non-residents of the state for placing insurance within the state, and that, the condition being invalid, its enforcement would be enjoined. *Frost Trucking Co.* v. *Railroad Commission, supra*, held that the State of California could not, as a condition to permitting private carriers to use the highways, compel them to become common carriers; and that a private carrier might use the highways and disregard the requirement. Similarly, many cases have held that a state may not collect a discriminatory tax, imposed as a condition to permitting a foreign corporation to do business within its borders. *Hanover Fire Insurance Co.* v. *Harding*, 272 U. S. 494.

All of these cases turn upon the principle that a power which cannot lawfully be exercised directly may

not be exercised by means of conditions to the granting of a privilege, even where the power to grant or deny that privilege is arbitrary and complete. Much less may such a condition be imposed by an administrative tribunal of limited powers, which may not arbitrarily grant or deny the authority sought. Such conditions, when imposed, are mere surplusage and their enforcement may be enjoined.

The Urgent Deficiencies Act (38 Stat. 219) transferred to the District Court the jurisdiction previously exercised by the Commerce Court under the Commerce Court Act (36 Stat. 539).* That Act expressly conferred upon the Commerce Court jurisdiction over all "cases brought to enjoin, set aside, annul or suspend in whole *or in part* any order of the Interstate Commerce Commission."

The ground of the motion to dismiss was that this jurisdiction does not extend to a suit to set aside or enjoin the enforcement of a part of an order, where such part is inseparably related to the balance of the order, which the court is not asked to set aside. The Commerce Court Act contains no such limitation. The Commerce Court Act clearly contemplated that a part of an order might be valid and other parts invalid, and expressly conferred

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*The Commerce Court Act Provides:

"That a court of the United States is hereby created which shall be known as the commerce court and shall have the jurisdiction now possessed by circuit courts of the United States and the judges thereof over all cases of the following kinds:

* * * * * *

"Second: Cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission."

jurisdiction to enjoin or set aside so much of such an order as was invalid. It will scarcely be contended that the condition, if beyond the authority of the Commission to make, acquires validity because of its inclusion in an order the remaining portions of which are valid. The condition, if void, is unenforcible by either civil or criminal proceedings. The Commerce Court Act provided for judicial review of the validity of any order or part thereof, in order to avoid subjecting the carrier against which it is directed to the necessity otherwise of being either coerced into obedience or required to disobey at its peril. Any defense which could be urged in suits for enforcement are necessarily available to the carrier in suits brought to set aside or enjoin any part of such order claimed to be void. If, as interpreted by the Commission, the condition is void, its invalidity would be a complete defense to any action for its enforcement and affords a complete basis for a suit to enjoin its enforcement and to set it aside as so interpreted.

It is said that the court below substituted its judgment for that of the Commission in an administrative matter. The only authority cited is *Procter & Gamble* v. *United States*, 225 U. S. 282. This was a case in which the Court refused to review the action of the Commission in dismissing a complaint brought by a shipper, holding that the power of review was limited to affirmative orders only and did not extend to negative orders. This is an action to set aside and restrain the enforcement of a part of an affirmative order, in the making of which it is claimed that the Commission exceeded its authority. No substitution of administrative judgment can be involved in determining this question of power.

Moreover, the Commission having approved the object of the issue, to wit, the acquisition of the properties of the Old Company, having found the consideration to be adequate, having approved the amount and classes of securities to be issued and the rates of interest to be paid, had exhausted its administrative power. *Miller* v. *United States,* 277 Fed. 95; cf. *People ex rel. Third Ave. Ry.* v. *Public Service Commission,* 203 N. Y. 299. It found all the jurisdictional facts. The condition imposed, relating to matters wholly outside the jurisdiction of the Commission and having no bearing upon the jurisdictional facts affirmatively found, was void, and mere surplusage.

III.

THE CONDITION, PROPERLY CONSTRUED, DID NOT REQUIRE THE NEW COMPANY TO IMPOUND THE TRUST FUND.

The order requires that the New Company "shall impound in a separate fund the money *received* from the payment by holders of preferred and common stock in an amount equal to $4 a share" etc. The Company could, of course, only impound that which it received. The reference to the $4 per share assessment is descriptive of the source of the money to be impounded, when received, and not of the amount to be either received or impounded. Giving to the words used their natural and customary meaning, the condition requires the Company only to impound the money received by it from the designated source, and not to obtain in addition something it was not entitled to receive. If such had been the intention, it could have been expressed very easily by a direction to "obtain and impound" the entire amount of the $4 per share assessments.

But it is said that this intent is made clear by reference to the report, which was made a part of the order. Where the order is ambiguous, the report may no doubt be used to clear up the ambiguity. But here there is no ambiguity. The Commission may state in its report that in its opinion certain things should be done in addition to those directed to be done in the order. It may even admonish the carrier that it expects them to be done,

but, unless directed to be done by the order, they are not within it. And an order, like a statute, if unambiguous as this is, is to be interpreted in accordance with the usual and customary meaning of the words employed.

Moreover, it is by no means plain from the report that the Commission intended to require the carrier to obtain the Trust Fund. It is true that the part of the report leading up to the statement of the condition to be imposed refers to both the reorganization expenses to be paid out of the Trust Fund and those to be paid out of the remaining portion of the $4 a share assessments. But the report itself recognizes that the New Company was not entitled to receive the Trust Fund (R. 140), and when the condition is stated it is phrased, as in the order itself, as a direction to impound the money *"received"* (R. 164). Of course, if the New Company received the Trust Fund, or any part thereof, it was required to impound it; but this is quite different from a direction to obtain it. The Commission knew that this money belonged to the stockholders of the Old Company, and that the New Company was powerless to obtain it, except with the consent of the parties affected. If it had intended to require the carrier to obtain it, as a condition subsequent to the order entered, it seems that it would have said so plainly somewhere in the report, if not in the order.

Finally, a statute or order should be construed, when possible, so as to save its validity. *United States* v. *Delaware & Hudson Company,* 213 U. S. 366. As

construed by the Commission, it is clearly invalid. For this reason alone it should be given the other construction.

Respectfully submitted,

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April 16, 1930.

SUPREME COURT OF THE UNITED STATES.

No. 10.—October Term, 1930.

The United States of America and Interstate Commerce Commission, Appellants, vs. Chicago, Milwaukee, St. Paul and Pacific Railroad Company.	Appeal from the District Court of the United States for the Northern District of Illinois.

[January 5, 1931.]

Mr. Justice Sutherland delivered the opinion of the Court.

In 1925 the Chicago, Milwaukee and St. Paul Railway Company, a Wisconsin corporation, became insolvent and passed into the hands of receivers appointed by the federal district court for the northern district of Illinois and subsequently by other federal district courts. Thereupon, and pending a decree of foreclosure of outstanding mortgages, committees were formed by and for the various classes of security holders for the purpose of protecting their several interests in the receivership proceedings and in the ultimate disposition of the railway property. Reorganization managers were appointed by the committees for the purpose of preparing and submitting a plan of reorganization. Thereafter, a plan was submitted to, and adopted and approved by, the committees, with an exception not material here, and after some modification was approved by the court below. There was a final decree of foreclosure under which the properties of the railway company, in November, 1926, were sold, subject to certain existing liens, to persons acting as agents for the managers and for the benefit of the security holders. This sale was confirmed and the plan held valid by the court, with a proviso that conveyances should not be delivered to appellee, the new company formed in pursuance of the reorganization plan, until after the Interstate Commerce Commission, pursuant to law, had authorized such company to issue the securities provided for in the plan.

The reorganization plan provided that the stockholders of the old company who accepted the plan might participate in the reorganization by depositing their common and preferred stock, together with the sum of $32 for each share of the former and $28 for each share of the latter. Each depositor was thereupon to receive in exchange common and preferred stock in the new company, and in addition $28 and $24, respectively, in five per cent. bonds of the new company. Out of the remainder of the money deposited, being $4 per share of the old stock, an amount equivalent to $1.50 per share was separated from the remaining $2.50 of the $4 fund and "set aside to provide for the compensation of the reorganization managers and the committees . . . and the fees and disbursements of their counsel and all depositaries and sub-depositaries, any balance of said sum to be paid over to the new company as additional working capital or, if the reorganization managers in their discretion shall so determine, to be returned *pro rata* to the holders of certificates of deposit for stock." The discretion so to be exercised by the managers was declared to be absolute and uncontrolled. The amount to be paid as compensation to the managers was definitely fixed by agreement contained in the plan and compensation for the services of the committees was to be fixed by the managers unless the plan should be abandoned, in which event none was to receive any compensation. Payment to other persons for services was to be made whether the plan should be carried through or abandoned. In respect of the remainder of the $4 fund, namely $2.50 per share, the effect of the plan was to require that after satisfying such expenses as costs of foreclosure, court allowances, engraving of securities for the new company, charges of corporate trustees, etc., any balance remaining should be paid over to the new company.

An application was made to the commission for a certificate of public convenience and necessity under the appropriate provisions of the Transportation Act, 1920, and for an order under § 20a of that act (c. 91, § 439, 41 Stat. 494; U. S. C., Tit. 49, § 20a) authorizing and approving the issue of securities in accordance with the reorganization plan. Section 20a of the act among other things provides:

"(2) . . . it shall be unlawful for any carrier to issue any share of capital stock or any bond or other evidence of interest in

or indebtedness of the carrier (hereinafter in this section collectively termed 'securities') or to assume any obligation or liability as lessor, lessee, guarantor, indorser, surety, or otherwise, in respect of the securities of any other person, natural or artificial, even though permitted by the authority creating the carrier corporation, unless and until, and then only to the extent that, upon application by the carrier, and after investigation by the Commission of the purposes and uses of the proposed issue and the proceeds thereof, or of the proposed assumption of obligation or liability in respect of the securities of any other person, natural or artificial, the Commission by order authorizes such issue or assumption. The Commission shall make such order only if it finds that such issue or assumption: (a) is for some lawful object within its corporate purposes, and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the carrier of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose.

"(3) The Commission shall have power by its order to grant or deny the application as made, or to grant it in part and deny it in part, or to grant it with such modifications and upon such terms and conditions as the Commission may deem necessary or appropriate in the premises, and may from time to time, for good cause shown, make such supplemental orders in the premises as it may deem necessary or appropriate, and may by any such supplemental order modify the provisions of any previous order as to the particular purposes, uses, and extent to which, or the conditions under which, any securities so theretofore authorized or the proceeds thereof may be applied, subject always to the requirements of the foregoing paragraph (2).

* * * * * *

"(11) Any security issued or any obligation or liability assumed by a carrier, for which under the provisions of this section the authorization of the Commission is required, shall be void, if issued or assumed without such authorization therefor having first been obtained, or if issued or assumed contrary to any term or condition of such order of authorization as modified by any order supplemental thereto entered prior to such issuance or assumption; . . ."

The commission, after a hearing, certified that public convenience and necessity required the acquisition and operation by the new company of the lines of railroad theretofore owned by the Chicago, Milwaukee and St. Paul Railway Company, and entered an order that the new company be authorized to issue the securi-

ties which were described in the report and order of the commission, "Provided, however, . . . that the applicant . . . (b) shall impound in a separate fund the money received from the payment by holders of preferred and common stock in an amount equal to $4 a share, which shall not be paid out unless and until so authorized by order of the court in respect to payments subject to the court's jurisdiction or by this commission."

The present suit was brought to have the foregoing clause (b) of the proviso declared beyond the lawful authority of the commission and void, and perpetually to enjoin appellants from enforcing the order of the commission in that respect. In addition to the facts hereinbefore set forth, and others, it was alleged in the petition that the commission and the United States had threatened to institute criminal or civil proceedings against appellee, in accordance with applicable provisions of the Interstate Commerce Act, for violation of the condition imposed by clause (b) of the proviso. Appellants answered separately, admitting all the material allegations of the petition pertinent to the question now under review; and separately moved to dismiss the petition on the ground that the court was without jurisdiction to set aside that part of the order which was assailed. After argument the court below entered a decree denying the motions to dismiss and perpetually setting aside, suspending and annulling, and perpetually enjoining the enforcement of, or attempt to enforce, the condition (b) imposed by the proviso, so far as it here is in question; that is to say, such part thereof as required appellee to obtain the special fund of $1.50 per share and impound the same, and which prohibited the making of any payment out of that fund without a prior determination by the commission in respect thereof.

The court below was of opinion that the proviso should be so construed as to include only the $2.50 part of the fund and exclude the special fund of $1.50 per share from its operation; otherwise that the condition in respect of the latter was void. The court further held that the case made by the petition was within the jurisdiction transferred to the district courts from the Commerce Court by c. 32, 38 Stat. 219, namely, jurisdiction over "Cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission." c. 309, 36 Stat. 539. 33 F. (2d) 582.

We do not stop to discuss the holding of the court below in respect of the construction of the proviso further than to say that, contrary to the view of that court though plausibly stated, we have reached the conclusion that the terms of the proviso embrace, and were meant to embrace, the entire fund of $4 per share, including the special fund of $1.50. Thus construed, two questions remain for consideration: (1) Was it within the power of the commission to impose the condition so far as it included the special fund? (2) Was that condition such a *part* of the commission's order as to cause it to fall within the jurisdiction conferred by the language last quoted above?

First. The legality of the acquisition and operation by the new company of the lines of railroad theretofore owned by the old company is not now in question. The requisite certificate of public convenience and necessity was issued by the commission. The order of the commission authorizing the new company to issue securities was made after a finding of all the facts required by the act as a necessary basis therefor. By subdivision (3) of § 20a the commission is empowered to make its grant of authority to issue securities upon such conditions as the commission may deem necessary or appropriate in the premises. The power to impose such conditions, however, is not unlimited and may not be exercised arbitrarily or (since Congress cannot delegate any part of its legislative power except under the limitation of a prescribed standard, *Union Bridge Co.* v. *United States,* 204 U. S. 364, 384-385) unless there be found substantial warrant for the conditions in the applicable standards established by the provisions of the act relating to such securities. The powers possessed by the commission are delegated by Congress under, and are to be exercised in conformity with, the constitutional grant of authority to regulate interstate and foreign commerce. Proceeding under that grant, as applied to the present matter, neither the commission nor Congress itself may take any action which lies outside the realm of interstate commerce. *Hammer* v. *Dagenhart,* 247 U. S. 251. It follows that if the condition in question relates not to such commerce, or to the rights or duties of the carrier engaged in such commerce, but exclusively to extrinsic matters, it is imposed without authority of law.

In the light of the foregoing, we examine the provision of the reorganization plan in respect of the special fund of $1.50 per share. That provision embodies a contract between the committees (voluntarily created by private persons), the managers, and such stockholders as shall elect to become depositors under the plan and shall advance, with other monies for other purposes, the specified sum for the distinct and sole purpose of paying the managers and others for services rendered in behalf of and for the exclusive benefit of these depositors. Neither the old company nor the new one was a party or was privy to this contract. Neither the contract when made nor any of the parties to it, in respect of the contract, was subject to the jurisdiction of the commission. It was not contemplated by any of the parties, by the new company, or by the court which held the plan to be valid, that the new company should have any enforceable interest in this special fund. Indeed, by contract between the new company, the managers and the purchasers at the sale, it was expressly agreed that the remainder of all cash received by the managers under the reorganization plan should be paid over to the new company, *except the special fund of $1.50 per share of the old company's stock*, "which, as provided in the reorganization plan, is to be set aside to provide for the compensation of the managers and the committees, fixed as therein provided, and the fees and disbursements of their counsel and of all depositaries and subdepositaries." And, correlatively, the new company agreed to pay all other expenses incurred by the managers except such as were to be paid out of this special fund. These agreements of the interested parties lend emphasis to the conclusion that the services to be rendered and expenses to be incurred in formulating and bringing about an approval of the plan were to be paid for out of the special fund as matters in which the private parties alone were concerned.

If the security holders, instead of agreeing to the provision for a special fund incorporated in the body of the reorganization plan, had bound themselves by a separate contract to compensate the managers and others for their services in behalf of the security holders, and had placed a sum of money in the hands of a trustee to secure payment of the estimated amount, as they well might have done, it probably would not have been contended that the commission lawfully could impose upon the issue of the securities the

condition that the new company should take control of this money or that it should be paid out under the direction of the commission. But in principle how does the case under review differ from the case supposed? The agreement in respect of the special fund, though contained in the body of the plan, is in effect as distinct as though it had been made by separate contract. It seems plain enough that the commission, by the condition here in question, has undertaken to lay its hands upon and control the disposition of a fund created by contract between private persons to which the carrier was not a party, in which the carrier had no enforceable interest, and which was not within the purview of the regulating power of the commission. The most that can be said is that the creation of the special fund—like production or manufacture of commodities, *United States* v. *E. C. Knight Co.*, 156 U. S. 1, 12—"may [or may not] result in bringing the operation of commerce into play." The contract was not one in respect of commerce but involved a transaction distinct and complete in itself without regard to its results; and, whether succeeded by commerce or not, was no part of it. *Diamond Glue Co.* v. *United States Glue Co.*, 187 U. S. 611, 616.

The proviso itself aptly illustrates by contrast the extent of the commission's power to impose conditions in respect of the matter under review. From the entire fund of $4 per share, $2.50 per share was set apart to be used for paying costs of foreclosure, court allowances, etc., and any balance remaining was to be paid over to the new company; and by a subsequent agreement this balance, together with an unexpended amount intended for expenses not yet liquidated, was formally conceded to be the property of the new company. This portion of the fund, therefore, was properly a part of the carrier's resources; constituted a subject matter upon which the legislative standards controlling the action of the commission in respect of the issue of securities had a direct bearing; was proximately related to, and might substantially affect, the commercial activities of the carrier; and, accordingly, was a subject in respect of which the condition properly could be imposed by the commission. In the case of the special fund of $1.50 per share, however, the carrier had no such interest. That fund was owned by and subject to the sole control of private persons. Whether the carrier would receive any part of it in the future was a matter of

speculation being wholly dependent upon the unrestricted will of its custodians. It results that the condition, in so far as it affects the special fund of $1.50 per share, was an interference with private property and rights lying outside the field of federal jurisdiction.

The power to regulate commerce is not absolute, but is subject to the limitations and guarantees of the Constitution, among which are those providing that private property shall not be taken for public use without just compensation and that no person shall be deprived of life, liberty or property without due process of law. *Monongahela Navigation Co.* v. *United States*, 148 U. S. 312, 336; *United States* v. *Joint Traffic Association*, 171 U. S. 505, 571-572; *Adair* v. *United States*, 208 U. S. 161, 180. Both the liberty of contract and the right to property here are involved. The contract was valid and had been so adjudged by the court having jurisdiction of the foreclosure and sale. The parties to it were willing and were entitled to have the contract executed according to its terms. There is no power in any department of the government to order otherwise. And certainly a carrier whose only interest in the property lies in the speculative possibility that some remnant of it in the future may come to the carrier as a *gift* is in no position to take it as of *right* without compensation. In that view, any legislative or administrative edict which purports to empower the carrier to take the property without compensation and dispose of it, not as the contract provides, but as the governmental body may direct, must fail as a futile attempt to accomplish what the Constitution does not permit.

Second. The jurisdiction of the federal district courts, as already pointed out, extends over cases brought to enjoin, set aside, annul, or suspend, in whole or *in part*, any order of the commission. The contention of the government is that the authority to enjoin an order in part, applies to a severable part of the order, but not to a condition upon which the order was issued after the carrier has exercised the authority granted by the order. No pertinent authority is cited in support of this contention, and none has been called to our attention. A condition contained in the order by which the grant is limited is as much a part of the order as any of its substantive provisions, and if beyond the jurisdiction of the commission is not ratified by an acceptance of the valid part of the order. It long has been settled in this court that the rejection

of an unconstitutional condition imposed by a state upon the grant of a privilege, even though the state possess the unqualified power to withhold the grant altogether, does not annul the grant. The grantee may ignore or enjoin the enforcement of the condition without thereby losing the grant. There are many decisions to this effect; but we need cite only *Frost Trucking Co.* v. *R. R. Com.*, 271 U. S. 583, 593-599, and *Hanover Ins. Co.* v. *Harding*, 272 U. S. 494, 507-508, where the cases are collected and reviewed. The decisions rest upon a principle, which "is broader than the applications thus far made of it," *Frost Trucking Co.* v. *R. R. Com.*, *supra*, at p. 598. Broadly stated, the rule is that the right to continue the exercise of a privilege granted by the state cannot be made to depend upon the grantee's submission to a condition prescribed by the state which is hostile to the provisions of the federal Constitution. *Western Union Tel. Co.* v. *Kansas*, 216 U. S. 1, 47-48; *Western Union Tel. Co.* v. *Foster*, 247 U. S. 105, 114.

Without attempting to determine how far this principle may be carried in its application to orders of the Interstate Commerce Commission, or attempting to formulate any general rule in respect thereof, we are of opinion that the principle does apply to the order now under review; and for present purposes that is enough.

An examination of the report shows that the commission first considered the question in respect of the authority to issue securities sought by the new company. As to that matter it found specifically all the facts required by § 20a as prerequisites to an order granting such authority. The commission further found that the value of the properties sought to be acquired, which included no part of the $4 fund, exceeded the amount of the securities, including preferred stock, to be issued or assumed, by more than $70,000,000.* In determining the value of the properties as a basis for the issue of the securities, the commission gave no con-

*The finding in detail is as follows:

"In the instant case the testimony is that the value of the properties proposed to be acquired ranges from $640,000,000 to $900,000,000. For purposes of argument, the Jameson committee took $700,000,000. The book value on May 31, 1927, in round numbers was $707,000,000. Against these values for this investment there will be outstanding after the proposed reorganization the following: Undisturbed bonds, excluding $22,129,000 of

sideration to the $4 fund, or to the amount of any balance which might remain after payment of the charges against it, upon the theory that it constituted any part of these properties. After a comprehensive review of the reorganization plan, the commission concluded: "Upon consideration of all the facts we are of opinion that the public interest will be served by an approval of the application, even though we should believe that a stronger financial structure might have been erected by the adoption of some other plan of reorganization."

The commission, having thus disposed of the application for authority to issue securities, turned to a consideration of the $4 fund and announced that the authority granted to issue the securities would be upon the condition set forth in clause (b) of the proviso. But nowhere in the report do we find the slightest suggestion that any part of the fund was included with the properties which were held to be a sufficient basis for the issue of the securities, together with the proposed non par value common stock. The fund was dealt with as an independent and separate matter upon the theory that the commission could reserve jurisdiction over it "for the purpose of taking further testimony as to the expenses of the reorganization, the nature and scope of the services performed for the compensation and fees claimed, and any other matters appropriate in the premises, and for the entering of pertinent orders in connection therewith." That it was not regarded as involving the basic ground for granting the authority is borne out by the concurring opinion of Commissioner Hall, who evidently so understood. He said, "I am in accord with the conclusions authorizing issuance and assumption of liability in respect of securities and granting

bonds assumed pursuant to the lease of Terre Haute, $160,001,960; 50-year 5 per cent mortgage gold bonds, $106,395,096; adjustment-mortgage bonds $182,873,693; preferred stock $119,845,800; total $569,116,549. Using the lowest figure, $640,000,000, and deducting from that amount the total par value of the securities enumerated, or approximately $569,100,000, would leave $70,900,000 as representing the value of the 1,174,060 shares of common stock without nominal or par value. In the hypothetical balance sheet as of May 31, 1927, the applicant shows $174,342,841.64 for the book value of the common stock. Without expressing any opinion as to the value of the no-par-value common stock, it would appear that upon applying the test suggested there will remain an unmortgaged equity in the properties sufficient to permit the bondholders to assign to the stockholders an interest therein and to support the issue of stock in the amounts proposed."

certificate of public convenience and necessity. I do not conceive that as a commission we have anything to do with the application which may be made of the $4 per share paid in to the reorganization managers by existing stockholders. What those stockholders do with their money is their affair unless and until some part of that money is paid over to the applicant."

The order in itself, being complete and self-sustaining and resting upon grounds found to be sufficient to support it, cannot be made to depend upon submission to a collateral condition, which, as we have shown, is beyond the statutory and constitutional power of the commission to impose. Whatever may be the general rule, we have no difficulty in concluding that, under the circumstances above recited, the principle in respect of the separability of unconstitutional conditions imposed upon a privilege granted by a state is applicable to the present order of the commission—and for a stronger reason, since that body, unlike a state in the class of cases referred to, does not possess the power arbitrarily to deny the authority here sought by the carrier.

From the foregoing it results that the condition in respect of the special fund of $1.50 per share was properly set aside and its enforcement enjoined by the court below.

Decree affirmed.

The CHIEF Justice took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 10.—October Term, 1930.

The United States of America and Interstate Commerce Commission, Appellants, *vs.* Chicago, Milwaukee, St. Paul and Pacific Railroad Company.	Appeal from the District Court of the United States for the Northern District of Illinois.

[January 5, 1931.]

Opinion of Mr. Justice Stone.

I think the judgment should be reversed and the order of the Interstate Commerce Commission upheld as one within its statutory authority. But even if it be assumed that the condition attached to the order was an improper one, it would seem that the respondent is now estopped to challenge it. In any case, I think the Court should not permit the order to stand as an unqualified approval of the proposed issue of securities, after striking from it the condition upon which the Commission's approval was given.

1. The obvious purpose of subsection (2) of § 20 (a) of the Transportation Act is the prevention of any issue of securities by a rail carrier unless the Interstate Commerce Commission, "after investigation . . . of the purposes and uses of the proposed issue and the proceeds thereof, . . . finds that such issue . . . is . . . compatible with the public interest, . . . and . . . reasonably necessary and appropriate" for the corporate purposes of the carrier. I suppose no one would doubt, and the opinion of the Court seems to concede, that if the assessments which, under the reorganization plan, were to be levied upon the stockholders of the old company, were all to be paid into the new one in exchange for the new securities, it would have been the duty of the Commission to investigate the purposes and uses of the new issue and its proceeds; and if it found that the issue to raise a fund for the payment of extravagant reorganization expenses was not com-

patible with the public interest, or reasonably necessary and appropriate for the corporate purposes of the new company, the Commission could have refused to approve it. Under subsection (3)[1] the Commission could have provided against improper expenditures by annexing to its order the very condition which it added in the present case.

But it is said that, because no part of the $1.50 fund provided by the stockholders to pay for the reorganization would necessarily ever come into the possession or control of the new company, and since its disposition was a mere matter of private contract between the stockholders and the reorganization managers, the condition was beyond the power of the Commission. The question is thus presented, whether the salutary provisions of § 20 (a) can be avoided, and an issue of securities, so far as it is made to raise a fund to defray excessive reorganization expenses, withdrawn from the control of the Commission, by the simple expedient of so arranging the reorganization plan that reorganization managers may retain and disburse, from the moneys paid in by the old stockholders to procure stock in the reorganized company, such amounts as may be required for reorganization expenses.

The history of the receivership resulting in the present reorganization will be found in the report of the Commission in the *Chicago, Milwaukee & St. Paul Investigation*, 131 I. C. C. 615, issued the same day as its report in the present case. The old company having reached the end of its financial rope, and protective committees representing respectively the bondholders, the preferred, and the common stockholders having been organized, its bankers, the present reorganization managers, were active in bringing about the receivership and have since dominated the reorganization. The Commission said (pp. 667, 668):

"For months prior to the receivership they [the railroad's directors] were impotent. It was an ideal situation for the bankers to control. This they promptly did, arranged all the details, framed up the committees favorably to themselves, put themselves on the bondholders' protective committee and constituted themselves reorganization managers."

[1](3) "The Commission shall have power by its order to grant or deny the application as made, or to grant it in part and deny it in part, or to grant it with such modifications and upon such terms and conditions as the Commission may deem necessary or appropriate. . . ."

As managers they formulated the reorganization plan, and incorporated it in an agreement between themselves and the committees. In every practical sense, the reorganization managers controlled the foreclosure proceedings resulting in the sale of the property of the old company. Their representatives were the purchasers at the foreclosure sale. They created and controlled the new company, which is the appellee here. The reorganization plan gave them full power to modify it as a whole or in detail, with the approval of the committee representing the securities affected. They were authorized to carry out the plan; and in doing so they were empowered to act for, and as intermediaries between, the committees, the stockholders, and the new company. Both preferred and common stockholders of the old company were required by the plan to surrender their stock in that company, and to pay $32 for each share of their common stock, and $28 for each of their preferred, in order to procure the securities of the new company. The alternative was loss of their rights as stockholders, which were still of substantial value. The plan called for the use of these sums to pay certain obligations of the old company, and such miscellaneous fiscal requirements of the new as were not supplied by the proceeds of its funded debt, and to create the $1.50 fund, from which were to be paid, in the uncontrolled discretion of the managers, the reorganization expenses incurred in launching the new company and securing the transfer to it of the business and property of the old.

It would seem that technical distinctions between possible methods of procuring payment of the last from funds raised by a security issue of the new company ought not to affect the authority of the Commission. I should have thought that, under our decisions, the Commission, where its order controls only the action of the appellee, might look through legal forms and, disregarding the corporate entity of appellee, treat the action of the reorganization managers, in dealing with the sums paid by the stockholders for the new stock of appellee, as that of their creature and *alter ego*, the appellee. See *United States Fuel Gas Co.* v. *Railroad Commission of Kentucky*, 278 U. S. 300, 308; *Chicago, Milwaukee & St. Paul Ry. Co.* v. *Minnesota Civic Assn.*, 247 U. S. 490; *United States* v. *Delaware, Lackawanna & Western R. R. Co.*, 238 U. S. 516; *United States* v. *Lehigh Valley R. R. Co.*, 220 U. S. 257.

But even if we disregard this identity of interest, and whatever the form of the transaction, whether the reorganization expenses were to be paid out by the new company directly, or merely for its account by the reorganization managers, its creators, in order to enable it to acquire the railroad property for the benefit of its stockholders, the source of the expense fund was the assessments paid by the old stockholders, in reality and legal effect part consideration for, and proceeds of, the issue of the new stock. To say that so much of the reorganization agreement as related to the creation and expenditure of the $1.50 fund for the payment of these expenses was a mere private agreement, unrelated to the issue of securities, with which the Commission is vitally concerned, is to ignore its plain terms and disregard its practical operation.

The first installment of the assessments was not to be paid in by the stockholders until the plan under which the new securities were to be issued was declared operative by the managers. Stockholders who failed to pay the installments in full could acquire no rights to securities in the new company. It cannot be supposed that one dollar of the $1.50 fund would ever have been contributed by stockholders, had not the reorganization agreement definitely undertaken to issue the securities under the plan to those stockholders who deposited their stock and made the required payments. The creation of this fund for the payment of the reorganization and other expenses was a part of the necessary price exacted for the new securities. It was an important purpose for which the new stock was issued, and one of the purposes which the Commission was directed by the statute to investigate in determining, as it was bound to do,[2] whether the issue was in the public interest and reasonably necessary and appropriate for the corporate purposes of appellee. The considerations affecting the judgment of the Commission in passing upon the reasonable necessity for the issue, its effect upon the public interest and upon the

[2]The Transportation Act of 1920, § 20a, provides (subsection 2): ". . . it shall be unlawful for any carrier to issue any share of capital stock or any bond or other evidence of interest in or indebtedness of the carrier . . . unless and until, and then only to the extent that, upon application by the carrier, and after investigation by the Commission of the purposes and uses of the proposed issue and the proceeds thereof, . . . the Commission by order authorizes such issue . . . The Commission shall make such order only if it finds that such issue . . . (a) is for some lawful object within its corporate

carrier's performance of its public service, are the same whether the expense fund was to be paid directly to the new company for disbursement by it, or short circuited, through the managers, from stockholders of the old to the various claimants for services rendered in creating the new.

Neither the public interest nor the duty imposed on the Interstate Commerce Commission is limited to insuring the payment of debts by any particular railroad, or procuring for it an adequate amount of money or property for the securities which it issues. An important purpose of the Transportation Act of 1920 was to preserve for the nation the transportation system as a whole, and, to that end, to secure a fair return on capital devoted to the transportation service. See *New England Divisions Case*, 261 U. S. 184, 189; *Wisconsin R. R. Comm.* v. *C. B. & Q. R. R.*, 257 U. S. 563, 585; *Dayton-Goose Creek Ry. Co.* v. *United States*, 263 U. S. 456, 478. The preservation of the transportation system and the stability of its credit essential to its preservation depend not alone upon the ability of individual carriers to meet their obligations, but upon the ability of all to attract the investment of funds in their securities. If such investments are impaired by receiverships of the carriers, followed by reorganizations of excessive cost, and if railroad shareholders, compelled by the necessities of their situation, must contribute to the rehabilitation of their properties excessive amounts upon which the reorganized carrier may not earn an adequate return, railroad credit in a broad sense is affected, the permanency and stability of the transportation system as a whole is impaired, and the public interest suffers. No one familiar with the financial and corporate history of this country could say, I think, that railroad credit and the marketability of railroad securities have not been profoundly affected, for long periods of time, if not continuously, by the numerous railroad reorganizations, in the course of which junior security holders have found it impossible to save more than a remnant of their investment, and that only by the assumption of a heavy burden of expense, too often the result of wasteful and extravagant methods of reorganization.

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purposes, and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the carrier of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose."

The public likewise has an interest in the costs of reorganization insofar as they may affect rates and the application of the recapture provision of the Transportation Act. Such costs may play an important part in the going concern value of the new company, which is an element of value for rate making purposes. See *Des Moines Gas Co.* v. *Des Moines*, 238 U. S. 153, 165; *Denver* v. *Union Water Co.*, 246 U. S. 178, 184, 192; *Bluefield Co.* v. *Pub. Serv. Comm.*, 262 U. S. 679, 686; *McCardle* v. *Indianapolis Water Co.*, 272 U. S. 400, 414. In *United Railways* v. *West*, 280 U. S. 234, a substantial amount was included in the rate base to cover "Cost of Financing". The mere fact that going concern value is supplied from sources other than the treasury of the carrier, here the stockholders of the old company who became stockholders of the new, is not material. See *United Railways* v. *West*, *supra*. The Commission is specially charged with public duties with respect to rates, valuation, and the administration of the recapture provisions. In all these respects the public interest may be adversely affected if railroad securities may be issued to effect, either directly or indirectly, the payment of excessive costs of reorganization.

If example were needed of the nature and extent of the public interest which may be involved, it is afforded by the present case. In passing upon the present issue of securities, the Commission had before it the results of its elaborate *Investigation of the Chicago, Milwaukee & St. Paul Ry. Co.*, *supra*, entered into after the receivership, in the course of which it commented on the excessive fees and commissions paid in the past by the Railway Company to its bankers, the present reorganization managers. It had before it tentative estimates of the total cost of reorganization running as high as $6,494,900. The $4 fund set apart for expenses approximated $9,330,000, of which the $1.50 fund was a part aggregating about $3,500,000, out of which were to be paid the reorganization managers, various protective committees, counsel, and depositaries. The estimated expenses to be paid from this fund ranged from $2,636,000 to $3,381,000, of which the compensation to be paid to the reorganization managers was $1,044,000.

These estimates were eighteen months old at the time the Commission made its report. The Commission concluded that the record was insufficient to enable it to arrive at an opinion as to the reason-

ableness of these expenses. It reserved jurisdiction to take testimony and to make further inquiry as to the expenses of reorganization, and the nature and scope of the services performed for the compensation fees claimed; but in order that the reorganization might proceed and the railroad property be released from the receivership, the authority for the issue of the new securities was granted upon the condition that the appellee impound the entire $4 fund, which was to be paid out only upon order of court or the Commission.

Since the Commission had concluded that the expenses might be excessive and that there was no adequate safeguard against improper payments, it could, under the express terms of the statute,[3] have rejected the application. But it is said that even though the Commission might rightly have refused its permission to issue the securities, still, having granted permission, it could not annex this condition to the order; and that, as it could not compel the reorganization managers to impound the expense fund paid over to them, or to submit the reasonableness of the expenses which they had incurred to the Commission or the court, it was an arbitrary and unwarranted exercise of power to make the Commission's approval of the stock issue conditional upon such action.

If that were a valid argument, it would follow that the Commission, notwithstanding the authority given it by subsection (3), could never attach any condition to its approval of an issue of securities, when compliance with the condition would involve the performance of acts which the Commission could not command. But the only purpose of subsection (3) would seem to be to enable the Commission to induce, not compel, action, by annexing to its order, as the statute authorizes, "such terms and conditions as the Commission may deem necessary or appropriate". Notwithstanding this broad language, it may be assumed that only those conditions which, like the present, are germane to the purposes of subsection (2) are intended; and that, consequently, only such terms and conditions may be annexed to the order as tend in some measure to remove objections to the issue, which legitimately might be the basis of withholding favorable action.

If the Commission, as I think it might, could have refused to approve the present issue of securities on the ground that they were to

[3]See statute, supra, note 2.

be issued to procure payment of reorganization expenses which were or might be excessive, then, plainly, under the provisions of subsection (3) and within the purview of subsection (2), it could have made its consent to the issue conditional upon the modification of the plan, in such manner as to preclude the payment of unreasonable expenses. Appellee was not obliged to comply with the condition, since it was not compelled to proceed with the plan, although compliance with it, through the exercise of the power of the managers to modify the plan, would not, so far as appears, have been impossible or even difficult. But as the condition was one which the Commission had power to impose, appellee, having accepted the plan, cannot repudiate the condition.

2. Even if it be held that the condition which the Commission attached to its order was beyond its authority, I should still have thought the present case not a proper one for a court of equity to lend its aid to the appellee, and in any event that the decree below should have been so framed as to leave no doubt that the Commission was free to treat the whole order as though it had not been made.

So far as appears, not until appellee filed the present petition did it disclose any purpose to disregard the condition upon which the order depended. In the meantime it had taken full advantage of the benefits of the order. After it was granted, appellee presented to the Commission two supplemental petitions for orders authorizing payments, from the expense fund, of specific amounts for corporate purposes, not including any item payable out of the $1.50 fund. The first of these was granted. Appellee stated in its first petition:

"The applicant will make such further application or applications, if any, with respect to matters dealt with in the commission's order and not covered hereby as from time to time may be necessary or proper."

The order of the District Court having jurisdiction of the foreclosure directed that deeds of the property should not pass to the appellee until it should have been authorized by the Commission to issue the securities. The appellee, without disclosing any purpose not to comply with the Commission's order, petitioned the District Court for an order directing the delivery of the deeds, exhibiting, the court below found, the order and certificate of the

Commission. Upon consideration of this application, the court ordered the delivery of the deeds; and appellee then issued the new securities. Only after the reorganization had thus become an accomplished fact by appellee taking the benefit of so much of the order as suited its purposes, did it elect to repudiate the condition upon which the order was founded. Of the appellee's application to the District Court, the court below rightly said, "The petition was a representation to the court that plaintiff [appellee here] had accepted the order and expected to comply with the condition. . . ."

If appellee were unable or unwilling to comply with the order as made, equity and good conscience required, at least, either disclosure of that fact to the District Court before securing the transfer of the railroad property to it; application, upon full statement of the facts, to the Commission to exercise the jurisdiction, which it had reserved, to approve a modified plan; or prompt initiation of the present proceedings to test the validity of the order before a situation had been created prejudicial to the public interest and to the Commission's performance of its duties. Instead, appellee adopted a course of conduct consistent throughout only with its apparent purpose to comply with the order; and now, without tendering any excuse for the belated disclosure of its real purpose, it asks relief from the condition only after it has enjoyed benefits which it cannot be said would have been granted without the condition. Neither this Court nor the court below is acting any the less as a court of equity because its powers are invoked to deal with an order of the Interstate Commerce Commission. The failure to conform to those elementary standards of fairness and good conscience which equity may always demand as a condition of its relief to those who seek its aid, seems to require that such aid be withheld from this appellee. See *Davis* v. *Wakelee*, 156 U. S. 680.

3. By the opinion of the Court, the order of the Commission, so far as it approves the issue of the securities, is treated as effective without the condition. But even if we assume that the condition which the Commission attached to the order is beyond its power, we should not attempt to substitute our judgment for that of the Commission, since the statute requires its consent, not ours; and we should not allow the order to stand without the condition, since that

is not the order which the Commission made. By the Transportation Act, the giving or withholding of consent to the issue of securities is an administrative power, conferred, not upon the courts, but upon the Interstate Commerce Commission. Courts may determine whether the Commission lacks the power to impose a particular condition; but they may not strike from an order the condition upon which it was granted, and thus declare that it shall stand although the condition is not complied with. See *United States* v. *Louisville & Nashville R. R.*, 235 U. S. 314, 320; *Proctor & Gamble Co.* v. *United States*, 225 U. S. 282; *Assigned Car Cases*, 274 U. S. 564.

Whether or not the Commission has in fact consented does not turn on whether the condition is good or bad, but on whether it can fairly be said that the Commission would have given its unqualified consent independently of the condition. As the report of the Commission discloses, consent to the issue was given only with reluctance, to release the properties from the receivership at the earliest possible moment, but with the undoubted assumption on its part as a moving cause for its consent, that by annexing the condition it would exercise control over the reorganization expenses, with respect to the amount of which it had expressed grave concern. With four of the Commissioners voting unconditionally against the issue, I see no sufficient warrant for assuming that any would have voted for it without the condition and without the further investigation which it thought necessary, and which it was authorized to make before unconditionally approving the issue. Both the report and order of the Commission state that the authority granted was upon the "express condition" which is now the subject of this controversy. If in the face of this language there can be any doubt as to the intention of the Commission, we need not speculate upon what it might have done, had it thought it was without power to impose the condition, since it is able to speak for itself if this Court permits it to do so by setting aside the entire order without prejudice to further action by the Commission, under the statute, upon the application for approval of the issue of the securities.

The judgment below, as interpreted by this Court, not only makes effective an order different from any the Commission has granted, but precludes any future action by the Commission in the per-

formance of its statutory duty. In this respect the case differs from those in which this Court has set aside an unconstitutional condition imposed by state legislation on a foreign corporation seeking to do business within a state. In those cases the judgment of this Court in no way restricts the further exercise of the legislative power of the state in any constitutional manner. Here the Commission is ousted from the exercise of power which Congress has given it, and an order is sanctioned authorizing an issue of securities which it cannot be said the Commission has approved, and which this Court does not purport to say is appropriate under the statute.

Mr. Justice HOLMES and Mr. Justice BRANDEIS concur in this opinion.